P89 711
US Docs
NOV 1 0 1989
New York State Library

US Department
of Transportation
**Federal Aviation
Administration**

Federal Aviation Regulations

Part 65
Certification: Airmen Other than Flight Crewmembers

Published
September 1974

Consolidated Reprint
This consolidated reprint incorporates:
Changes 1 through 12
as of 4/11/89

A89041711A

IMPORTANT NOTICE

Part 65 is sold on a subscription basis by the Superintendent of Documents, U.S. Government Printing Office, therefore subscribers will receive Changes to this Part automatically.

NOTICE TO FAA AND OTHER GOVERNMENT USERS

Distribution of Changes to this Part within the Federal Aviation Administration and other U.S. Government agencies will be made automatically by FAA in the same manner as distribution of this basic Part.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

READEX FICHE best copy available

PARTICIPATION IN NOTICE OF PROPOSED RULEMAKING PROCEDURES

Your purchase of Part 65 indicates that you have a need for the regulatory material that it contains.

It is possible that this Part is sufficiently important to you that you may wish to participate in the rulemaking process when a change is proposed. If you are not on the Notice of Proposed Rulemaking mailing list for this Part and wish to receive further Notices of Proposed Rulemaking, without charge, please complete the request below and send it to the address indicated.

Upon receipt, an individual "Record Ident" will be created from the information you submit and your name will be placed on a computerized mailing list. The "Record Ident" is the key that controls all changes to your record and is reflected in the mailing label used to send you Notices of Proposed Rulemaking. Therefore, it is important that you save one of the mailing labels and include it in any correspondence you initiate concerning this NPRM service as it will ensure positive identification and prompt response.

NPRM ORDER FORM

Department of Transportation
Office of the Secretary
Distribution Requirements Section, M-443.2
Washington, D.C. 20590

Please place the following on the Part 65 Notice of Proposed Rulemaking mailing list:

Title or Name:

_____

Company:

_____

Address _____
(Street)

_____
(City) (State) (Zip)

Introductory Note

Part 65 is codified under Subchapter D, Airmen, of Title 14 of the CODE OF FEDERAL REGULATIONS.

This FAA publication of the basic Part 65, effective November 1, 1962, incorporates Amendments 65–1 through 65–21 and any changes required by the Department of Transportation transition amendment.

A8904171lA

Part 65—Certification: Airmen Other Than Flight Crewmembers

Contents

Section		*Page*
Preambles		P-1
	Subpart A—General	
65.1	Applicability	1
65.3	Certification of foreign airmen other than flight crewmembers	1
65.11	Application and issue	1
65.12	Offenses involving alcohol or drugs	1
65.13	Temporary certificate	1
65.15	Duration of certificates	2
65.15a	[Reserved]	2
65.16	Change of name; replacement of lost or destroyed certificate	2
65.17	Tests: general procedure	2
65.18	Written tests: cheating or other unauthorized conduct	2
65.19	Retesting after failure	3
65.20	Applications, certificates, logbooks, reports, and records: falsification, reproduction, or alteration	3
65.21	Change of address	3
65.23	[Refusal to submit to a drug test]	3
	Subpart B—Air Traffic Control Tower Operators	
65.31	Required certificates, and rating or qualification	3
65.33	Eligibility requirements: general	4
65.35	Knowledge requirements	4
65.37	Skill requirements: operating positions	4
65.39	Practical experience requirements: facility rating	4
65.41	Skill requirements: facility ratings	5
65.43	Rating privileges and exchange	5
65.45	Performance of duties	5
65.46	[Use of prohibited drugs]	5
65.47	Maximum hours	6
65.49	General operating rules	6
65.50	Currency requirements	6
	Subpart C—Aircraft Dispatchers	
65.51	Certificate required	6
65.53	Eligibility requirements: general	6-1
65.55	Knowledge requirements	6-1
65.57	Experience requirements	6-1
65.59	Skill requirements	7
65.61	Aircraft dispatcher courses	7
	Subpart D—Mechanics	
65.71	Eligibility requirements: general	7
65.73	Ratings	7
65.75	Knowledge requirements	8

Section *Page*

Subpart D—Mechanics (*Continued*)

65.77 Experience requirements 8
65.79 Skill requirements 8
65.80 Certificated aviation maintenance technician school students 8
65.81 General privileges and limitations 8
65.83 Recent experience requirements 8
65.85 Airframe rating: additional privileges 9
65.87 Powerplant rating: additional privileges 9
65.89 Display of certificate 9
65.91 Inspection authorization 9
65.92 Inspection authorization: duration 9
65.93 Inspection authorization: renewal 10
65.95 Inspection authorization: privileges and limitations 10

Subpart E—Repairmen

65.101 Eligibility requirements: general 10
65.103 Repairman certificate: privileges and limitations 11
65.104 Repairman certificate (experimental aircraft builder) eligibility, privileges and limitations 11
65.105 Display of certificate 11

Subpart F—Parachute Riggers

65.111 Certificate required 11
65.113 Eligibility requirements: general 12
65.115 Senior parachute rigger certificate: experience, knowledge, and skill requirements 12
65.117 Military riggers or former military riggers: special certification rule 12
65.119 Master parachute rigger certificate: experience, knowledge, and skill requirements 12
65.121 Type ratings 13
65.123 Additional type ratings: requirements 13
65.125 Certificates: privileges 13
65.127 Facilities and equipment 13
65.129 Performance standards 13
65.131 Records 14
65.133 Seal 14

Appendix A

Aircraft Dispatcher Courses 15

Adoption of Subchapter D

Adopted: August 6, 1962 **Effective: November 1, 1962**

This amendment adds Subchapter D "Airmen" to Chapter I of Title 14 of the Code of Federal Regulations. The amendment is a part of the program of the Federal Aviation Agency to recodify its regulatory material into a new series of regulations called the "Federal Aviation Regulations" to replace the present "Civil Air Regulations" and "Regulations of the Administrator".

During the life of the recodification project, Chapter I of Title 14 may contain more than one Part bearing the same number. To differentiate between the two, the recodified Parts, such as the ones in this subchapter, will be labeled "[New]". The label will of course be dropped at the completion of the project as all of the regulations will be new.

Subchapter D [New] was published as a notice of proposed rule making in the Federal Register on May 2, 1962 (27 F.R. 4175) and as Draft Release 62–20.

Some of the comments received recommended specific substantive changes to the regulations. Although some of the recommendations might, upon further study, appear to be meritorious, they cannot be adopted as a part of the recodification program. The purpose of the program is simply to streamline and clarify present regulatory language and to delete obsolete or redundant provisions. To attempt substantive changes in the recodification of these regulations (other than minor, relaxatory ones that are completely noncontroversial) would delay the project and would be contrary to the ground rules specified for it in the Federal Register on November 15, 1961 (26 F.R. 10698) and Draft Release 62–20. However, all comments of this nature will be preserved and considered in any later substantive revision of the affected Parts.

Certain changes, not contained in Draft Release 62–20, reflect amendments, to the Parts revised herein, that became effective after the Draft Release was published. Each of these amendments, when published, contained a statement that they would be included in the final draft of the recodified Parts affected and, in addition, Draft Release 62–20, stated that such amendments would be included in the final draft of the revised subchapter. See amendments 20–15, 20–16, 20–17, 21–3, 22–13, 22–14, 24–4, and 24–5.

Draft Release 62–14, dated April 2, 1962, proposed certain amendments to provisions of Part 20 of the Civil Air Regulations under which former military pilots may obtain private and commercial pilot certificates on the basis of military competence. The period for receiving comments on the proposal having closed on June 7, 1962, and no adverse comments having been received thereon, these amendments are incorporated into § 61.31 of the revised subchapter.

Other minor changes of a technical clarifying nature or relaxatory nature have been made. They are not substantive and do not impose any burden on regulated persons. For example, the unnecessary provision, contained in CAR 21.23, that an airline transport pilot must present his pilot certificate for inspection by any person, has been deleted in the light of other existing requirements that such a pilot must present his certificate for inspection upon the request of the Administrator, an authorized representative of the CAB, any State or local law enforcement officer, or any passenger.

Draft Release 62–27 dated June 8, 1962 (27 F.R. 5686) contained a notice of the revision of the procedural rules of the Federal Aviation Agency. The preamble to the release stated that the certification procedural rules in Part 406 of the Regulations of

the Administrator were being considered for transfer to the Parts to which they specifically applied, insofar as they did not duplicate provisions already in those Parts. For this reason, a new Subpart B, relating to procedures for medical certificates, has been added to Part 67 "Medical Standards and Certification" [New]. The subpart is a revision, without substantive changes, of medical certification provisions now in Part 406.

Of the comments received on Draft Release 62–20, several suggested changes in style, format, or technical wording. These comments have been carefully considered and, where consistent with the style, format, and terminology of the recodification project, were adopted.

The definitions, abbreviations, and rules of construction contained in Part 1 [New] of the Federal Aviation Regulations apply to the new Subchapter D.

Interested persons have been afforded an opportunity to participate in the making of this regulation, and due consideration has been given to all relevant matter presented. The Agency appreciates the cooperative spirit in which the public's comments were submitted.

In consideration of the foregoing Chapter I of Title 14 of the Code of Federal Regulations is amended, effective November 1, 1962, by deleting Parts 20, 21, 22, 24, 25, 26, 27, 29, 34, 35, §§ 43.40–43.42, 43.52–43.63, 43.64(b), (c), and (d), 43.65, 43.68, and Special Regulations 428 and 434, and by adding Subchapter D [New]*, reading as hereinafter set forth.

This amendment is made under the authority of sections 313(a), 314, 601, and 607 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1355, 1421, and 1427).

---

*Includes Part 61—Certification: Pilots and Flight Instructors [New]; Part 63—Certification: Flight Crewmembers Other Than Pilots [New]; Part 65—Airmen Other Than Flight Crewmembers [New]; Part 67—Medical Standards and Certification [New].

Amendment 65–1

Airmen [New]

Adopted: October 19, 1962 **Effective: November 1, 1962**

The purpose of this amendment is to incorporate into Subchapter D "Airmen" [New] of the Federal Aviation Regulations, several minor items of a clarifying nature. It also includes three items that had been omitted from the Subchapter through inadvertence. The amendment is a part of the program of the Federal Aviation Agency, in conjunction with its recodification program, to deal with inconsistencies and discrepancies in its regulations that are brought to light in the recodification process, and that can be cured by a spot amendment to the regulation involved, particularly in those instances in which the issuance of a notice of proposed rule making will not be required by the Administrative Procedure Act.

Since the adoption of Subchapter D on August 6, 1962, certain minor discrepancies and inconsistencies have been discovered. A study of them has indicated that they can be resolved in a manner that is not burdensome to the persons affected thereby.

The amendments to §§ 61.15(d), 61.17, 61.27(a)(2)(ii), 61.33(a), 61.47(e), and 61.159 all relate to ratings placed on airman certificates. They are clarifying in nature in that they specify more clearly the kind of rating placed on airman certificates.

The amendments to §§ 61.27(d) and 61.171(d)(4)(v) correct typographical errors.

The amendments to §§ 65.75(b) and 65.93(b) are made solely to clarify the intent of the present section.

The amendment to § 61.43(a)(3) and (b)(2) is made to state positively the duration of a medical certificate for operation requiring a free balloon pilot certificate.

The amendments to §§ 61.115(b) and 61.119(b) are made to correct inadvertent omissions in the text of those sections as recodified. The amendment to § 61.31 restates the requirements that an applicant for a pilot certificate, based on military competence, must meet. These requirements were fully set forth in Draft Release 62–14 dated April 2, 1962. The period for receiving comments on that proposal closed on June 7, 1962, and no adverse comments were received. The amendments to § 63.3 are made to state positively the duration of a medical certificate for operations requiring a flight engineer or flight navigator certificate. This duration was previously set forth in §§34.43 and 35.43, of the Civil Air Regulations.

Since this amendment is clarifying in nature, and merely restates the substance of the regulations in accordance with Draft Releases 61–25 and 62–20, I find that notice and public procedure hereon are unnecessary, and it may be made effective on less than 30 days' notice.

In consideration of the foregoing, Subchapter D of Chapter I of Title 14 of the Code of Federal Regulations is amended as follows, effective November 1, 1962.

This amendment is made under the authority of sections 313(a), 601, and 602 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1422).

(Published in 27 F.R. 10409, October 25, 1962, effective November 1, 1962.)

Amendment clarifies intent of § 65.75 (b) by inserting "written" in last sentence and § 65.93 (b) is reworded to clarify compliance requirements for renewal of an inspection authorization.

Amendment 65–2

Miscellaneous

Adopted: April 15, 1964 **Effective: July 6, 1964**

(Published in 29 F.R. 5449 on April 23, 1964)

This amendment amends Part 65 [New] of the Federal Aviation Regulations to make paragraph (a) of § 65.81 and subparagraph (a) (1) of § 65.95 applicable to the conditions of Part 43, Maintenance, Preventive Maintenance, Rebuilding, and Alteration [New], as published in the Federal Register (29 F.R. 5447), effective July 6, 1964.

Amendment 65–3

Cheating on Tests and Other Irregularities

Adopted: February 11, 1965 **Effective: March 20, 1965**

(Published in 30 F.R. 2195 on February 18, 1965)

The purpose of these amendments is to prohibit cheating or certain other unauthorized conduct in connection with FAA written airman or ground instructor tests; fraudulent or intentionally false applications for airman, ground instructor, or medical certificates or ratings, or entries in logbooks, records, or reports required in connection with these certificates or ratings; and alteration, or fraudulent reproduction of these certificates or ratings. This action was proposed in Notice No. 64–20 (29 F.R. 4919) issued April 1, 1964. As proposed, it applies to not only the airman regulations but also the regulations covering medical certification and ground instructors.

A number of comments were received on Notice No. 64–20, most of them generally favorable to the proposed amendments. Three comments opposed as too harsh the provision that the commission of a prohibited act is a basis for suspending or revoking an existing certificate or rating held by the violator. A major purpose for this provision is the deterrent effect of the enunciation of a strong available penalty. Thus, the provision is especially significant with respect to a person who assists another in the violation, for example by taking a test for him. In such a case, it is no deterrent to the former (who usually is obtained because he already holds the certificate the latter is seeking) merely to warn him that the principal penalty for taking a test in behalf of another person is that he will not be eligible, for a year thereafter, for any airman, ground instructor, or medical certificate or rating, as the case may be. The most effective deterrent in this situation would be the possibility of loss of one or all of the certificates he already possesses.

The one-year ineligibility for a certificate or rating is automatic in the case of cheating or other unauthorized conduct in connection with written tests. However, as indicated by Notice No. 64–20, the fact that suspension and revocation of certificates or ratings are made available in these regulations does not mean they must be imposed in every case or automatically upon every violator. The same degree of discretion and the same criteria for the imposition of these sanctions will be exercised by the Agency officials responsible for taking enforcement action in this area as in all other areas where penalties are provided for violation of regulations. Furthermore, the sanctions made available by these amendments do not preclude the imposition, in case of violation, of civil penalties under Section 901 of the Federal Aviation Act of 1958 (49 U.S.C. 1471), either alone or in conjunction with these sanctions.

Comments also were received urging that acts to be prohibited by these amendments should be done "knowingly," or "willfully," or "knowingly or willfully," to incur the sanctions provided. It of course is not the design of these amendments to prohibit acts that might likely be committed inadvertently. Accordingly, these amendments make clear that intention is an element of those prohibited acts that otherwise might likely be committed inadvertently, namely, the removal of a written test, or a false statement on an application for a certificate or rating or in a logbook, record, or required report. Also, responsive to several comments and reflecting the original intention as to reproductions of certificates or ratings, the prohibition has been restated to refer to reproduction for fraudulent purpose. Furthermore, the reference in Notice 64–20 to authorization by the Administrator in this connection has been dropped in these amend-

ments, since only fraudulent reproductions are prohibited, and since new documents are issued where appropriate, thus obviating any need for authorizing alterations.

Interested persons have been afforded an opportunity to participate in the making of these amendments, and due consideration has been given to all matter presented.

In consideration of the foregoing, Part 65 of the Federal Aviation Regulations is amended, effective March 20, 1965, as follows.

These amendments are made under the authority of sections 313(a), 601, 602, and 607 of the Federal Aviation Act of 1958 (49 U.S.C. 1354, 1421, 1422, 1427).

Amendment 65–4

Miscellaneous Amendments

Adopted: March 16, 1965 **Effective: April 1, 1965**

(Published in 30 F.R. 3637, March 19, 1965)

This amendment amends section 65.95(a)(1) to make the cross reference therein consistent with the recodified regulations.

Amendment 65–5

Change of Name of "Periodic Inspection" to "Annual Inspection", and Clarification of 100-hour Inspection Requirement

Adopted: February 25, 1966 **Effective: April 2, 1966**

(Published in 31 F.R. 3336; March 3, 1966)

These amendments change the name "periodic inspection" to "annual inspection" throughout the Federal Aviation Regulations, and make clear the conditions under which an inspection satisfying the 100-hour inspection requirement of § 91.169(b) also satisfies the annual (formerly "periodic") inspection requirement of § 91.169(a). No substantive change is made by these amendments.

These amendments are based on, and are issued for the reasons contained in, Notice 65–26, published in the Federal Register (30 F.R. 13167), on October 15, 1965. All comments received in response to Notice 65–26 favored the changes proposed therein.

Comments not directly related to the notice suggested (1) that the references to Part 43 in § 91.169 be changed to references to Part 65, (2) that the "excess time" provision of § 91.169(b) be deleted, and (3) that the authority of the holder of an inspection authorization to approve products for return to service be made explicit in § 65.95(a)(2). These comments do not affect the disposition of Notice 65–26 and will be given future consideration.

In consideration of the foregoing, Chapter I of Title 14 of the Code of Federal Regulations is amended, effective April 2, 1966, as hereinafter set forth.

These amendments are made under the authority of sections 313(a) and 601 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a) and 1421).

Amendment 65-6

Mechanic Certificates: Knowledge, Experience and Skill Requirements

Adopted: April 13, 1966 **Effective: April 20, 1966**

(Published in 31 F.R. 5949, April 19, 1966)

The purpose of these amendments to Part 65 of the Federal Aviation Regulations is to permit a student at a certificated mechanic school to take the oral and practical tests required for a mechanic certificate or rating before he passes each section of the required written tests or meets the applicable experience requirements. This departure from the sequence ordinarily required will be allowed, during the final phase of his training in the school curriculum, whenever the school shows to an FAA inspector that any of its students has made satisfactory progress at the school and is prepared to take the oral and practical tests. Two minor amendments also are made to Part 65.

The amendments were proposed in Notice 65-25 and published in the Federal Register on October 9, 1965 (30 F.R. 12892). A large majority of the comments received on the Notice concurred in the proposal. A few comments were expressed against the proposal. Two of these comments assumed that the new § 65.80 would permit students to take oral and practical tests after each phase of training. Likewise, several comments concurring with the proposal either assumed or suggested the same progressive taking of these tests. This was not the intention of the proposal, but rather that the oral and practical testing should be permitted only during the final phase of training in the school's course curriculum. The latter intention is implicit in Notice 65-25. The Notice did not speak of "sections" for these tests as it did concerning the written test. Its preamble referred to the student with a "satisfactory record" of progress at the mechanic school. The propriety of attaching the latter meaning to the provision is supported by the fact that some comments apparently considered the proposal had that meaning, for they expressed concurrence either upon the assumption that the student affected has satisfactorily completed all of the part of the school curriculum applicable to the rating sought, before taking the oral and practical tests, or with the additional recommendation that the privilege be extended to only those students who maintains an "overall average" of at least 80%. In order to make this point clear, § 65.80 as amended specifies that for its purposes the time when the student may be permitted to take the oral and practical tests is during the final phase of training.

Several other comments opposed the change with the assertion that all sections of the written test should be passed before the oral and practical tests are taken and none of these tests should be given by the school from which the student graduates, or that practical tests are superfluous for graduates of approved schools in any event. However, as stated in Notice 65-25, compliance with the requirement of § 65.75(b) generally applicable, that an applicant for a mechanic certificate or rating must pass each section of the written test before taking the oral and practical tests, presents a problem for students of certificated mechanic schools because in most cases they would have to wait until after graduation to take the prescribed tests. Furthermore, if an applicant must pass each section of the written test before taking the oral and practical tests, additional delay occurs while he awaits the results of the written test, especially where he fails and must retake one section or more. Also as stated in the Notice, training given in a certificated mechanic school is closely controlled, students are tested throughout each phase of a curriculum, and then in the final phase they are tested by the school on subjects covered in the appropriate FAA written, oral, and practical tests. In view of all of these circumstances, and with the concurrence of the large majority of the comments, the Agency has determined to issue these amendments, as proposed and now clarified.

Also, as proposed, § 65.75(a) is now amended to make clear that an applicant for a mechanic certificate must meet the applicable experience requirement of § 65.77 before he takes the written test. Finally, § 65.71(c) is stricken out because the time for recognition of credit for tests passed before May 20, 1962, has elapsed.

Interested persons have been afforded an opportunity to participate in the making of these amendments, and due consideration has been given to all relevant matter presented.

Since the addition of § 65.80 to Part 65 is relaxatory in nature and imposes no burden upon any person, and the amendment of § 65.75 is clarifying in nature, good cause exists for making these amendments effective on less than 30 days published notice.

In consideration of the foregoing, Part 65 of the Federal Aviation Regulations is amended, effective April 20, 1966.

These amendments are made under the authority of sections 313(a), 601, and 602 of the Federal Aviation Act of 1958 (49 U.S.C. 1354, 1421, 1422).

Amendment 65–7

Air Traffic Control Tower Operators

Adopted: May 17, 1966 **Effective: June 23, 1966**

(Published in 31 F.R. 7455, May 24, 1966)

The purpose of this amendment is to revise the knowledge requirements for applicants for control tower operator certificates; to require each person engaged as an air traffic control tower operator in connection with civil aircraft to hold a control tower operator certificate and an appropriate rating; and to revise references to publications to conform to current titles.

The Agency published a notice of proposed rule making in the Federal Register on January 26, 1963 (28 F.R. 727), circulated as Draft Release No. 63–2 which proposed a new rating system in place of the present junior and senior ratings for control tower operator certificates; a revision of the knowledge requirements for applicants in accordance with current practices, and a requirement that each person engaged as an air traffic control tower operator in connection with civil aircraft must hold a control tower operator certificate and an appropriate rating.

Comments received in response to the Notice indicated a general endorsement of the proposal. Delay in incorporation of the proposed amendment and implementation of the revised rating system has been the result of its relationship with another project involving the reissuance of airman certificates.

Implementation of the proposed rating system would require, among other things that all junior and senior control tower operator ratings be exchanged for new rating and new airman certificates. This exchange would represent a sizeable administrative and economic undertaking. In the interest of economy and efficiency it was determined that the two projects could best be accomplished concurrently. As it now appears that additional time will be necessary for the development and implementation of the reissuance system, it has been determined that the part of the proposal relating to the revised rating system for air traffic control tower operators will not be put in effect at this time. Any future action to establish this system will be preceded by an appropriate notice of proposed rule making.

The additional knowledge requirements for a control tower operator certificate imposed by this amendment involve communications operating procedures and flight assistance services. As stated in the Notice the Agency has for several years required its employees who are applicants for control tower operator certificates to be tested in these areas, therefore this revision is in conformance with the current practice. One aviation association recommended that these requirements be expanded to include a basic knowledge of aerodynamics. A second made a similar recommendation, suggesting an additional requirement on aircraft flight characteristics and speeds. The Agency has not observed a lack of knowledge of these subjects on the part of tower controllers. These personnel receive substantial on-the-job training in acquiring the necessary ratings to control air traffic. By this process the new controller learns aircraft performance through observation and practical experience. While this experience contributes little to an academic knowledge of aerodynamics, it does provide the controller with knowledge of those characteristics of aircraft performance that are pertinent to his job at a particular location. Accordingly, in the absence of evidence as to a present need, neither of these recommendations is adopted at this time.

One of the military services noted that the knowledge requirements of Part 65 do not conform to the military training program. While the military training program requires the trainees to satisfactorily complete the FAA certification examination, this examination does not cover all the areas in which the military controller is instructed and, conversely, completion of the examination requires a detailed knowledge of certain subjects in excess of those required by the trainee in performing his control duties in the military environment. The knowledge requirements specified in Part 65 have been determined by the Agency to be the minimum requirements for the certification of a control tower operator exercising control of civil aircraft in air commerce. A determination has been made that it would not be desirable to establish two sets of standards.

Since publication of the Notice, the *Airman's Guide* and the *Flight Information Manual* referenced in § 65.39 have been replaced by the *Airman's Information Manual*. Therefore, references to these publications have been corrected. Additionally, references to old part 60 of the Civil Air Regulations in § 65.41(b) and (c) have been replaced by specific references to Part 91 of the Federal Aviation Regulations. Since these alterations are editorial in nature, notice and public procedure hereon are unnecessary and they may become effective concurrently with the alterations published in the Notice.

In consideration of the foregoing, Subpart B of Part 65 of the Federal Aviation Regulations is amended, effective June 23, 1966, as hereinafter set forth.

These amendments are made under the authority of Secs. 313(a), 601, and 602 of the Federal Aviation Act of 1958 (49 U.S.C. 1354, 1421, 1422).

Amendment 65–8

Prerequisites for Written Tests

Adopted: May 23, 1966 **Effective: June 26, 1966**

(Published in 31 F.R. 7609 May 27, 1966)

The purpose of these amendments is to remove from the airman certification regulations all requirements that applicants for airman certificates meet aeronautical experience requirements before taking the prescribed written tests. These amendments also remove the requirement that an applicant for an airline transport pilot certificate must meet the general eligibility requirements (other than age) before taking the written test.

Section 61.143 (Airplane rating: aeronautical knowledge) requires an applicant for an airline transport pilot certificate with an airplane rating to meet specified aeronautical experience before taking the written test. (The same requirement exists for the holder of an airline transport pilot certificate, rotorcraft rating, who applies for an airplane rating, since under paragraph (b) of § 61.157 (Additional category ratings) he must comply with § 61.143. A change in the latter section has the effect of removing the requirement automatically in this situation.) Paragraph (c) of § 63.35 (Knowledge requirements) contains this requirement for an applicant for a flight engineer certificate. Paragraph (a) of § 65.75 (Knowledge requirements) contains the requirement for a mechanic certificate or rating. In § 65.115, the sequence stated, and administered accordingly, has placed the experience requirement before the written test. This sequence is not prescribed by the certification regulations for other airmen, nor for an instrument rating under Part 61, and in each of those situations any applicable written test may be taken first. In addition, an applicant for an airline transport pilot certificate, before taking the written test, has been required to meet the general eligibility requirements (other than age) of § 61.141, that is, the requirements on moral character, ability to read, write and understand the English language, education, and medical certification.

Private pilot written examination service has been provided at Flight Service Stations for several years. In addition, the Agency recently conducted a test program in the Southern Region whereby expanded examination service at Flight Service Stations was provided. This service, covering all airmen written examinations, was very well received by the public and the number of applicants taking examinations at Southern Region Flight Service Stations has more than doubled since introduction of the expanded service.

The obligation of the applicants for these airman certificates to first meet aeronautical experience requirements has entailed the need to obtain eligibility verification, before taking the written test at selected Flight Service Stations, from inspectors at Air Carrier District Offices, or General Aviation District Offices or itinerary points. The Agency has determined, in conformity with its overall policy of providing the best possible service to the public, and in order to reduce the required extent of applicants' travel for certifition purposes, that the showing of technical qualifying experience needs to be made to the Agency only before the prescribed oral, practical, or flight test, in the four situations discussed.

The Agency believes that the service afforded the public more than offsets the previous requirement that showing of technical qualifying experience must be made before applicants may take certain written tests.

Section 61.21 of Part 61 specifically requires an applicant for a certificate or rating to have passed the written test (if required) and have the applicable aeronautical experience, in order to be eligible for a flight test. Neither Part 63 nor 65 has a similar provision. It is necessary to preclude any apprehension that the oral, practical, or flight test may now precede compliance with technical qualifying experience in any situation, as a result of the removal of the regulatory requirements that the latter precede written tests in the four situations actually involved here. These amendments therefore also add, wherever necessary in these two Parts, the provision that both the written test and technical qualifying experience must precede the showing of skill.

Section 61.145(b)(2) requires an applicant for an airline transport pilot certificate with an airplane rating to have had at least 1200 hours of flight time as a pilot within the 8 years before he applies. Under § 61.143 before these amendments, it was necessary to acquire this experience before the written test. Removing the sequence requirement of § 61.143 now will necessitate the accumulation of the 1200 hours within the 8 years before the flight test. As a result, with the passage of time an applicant entitled to the benefits of § 61.21(b) could lose credit for substantial flight time acquired as a pilot. Section 61.21(b) provides that an applicant for an airline transport pilot certificate need not take the written test within 24 months before taking the flight test if he has been continuously employed as a pilot or as a pilot assigned to flight engineer duties by, and has continuously participated in an approved pilot training program of a United States air carrier or commercial operator. (A similar time extension is provided in like circumstances for a person employed as a pilot by a United States scheduled military air transportation service.) In order to prevent the loss of benefits under this provision, these amendments add to § 61.21(b) a provision stating specifically that the applicant complies with the time limitation of § 61.145(b)(2) if he has had at least 1200 hours of flight time as a pilot within any 8 consecutive years before he takes the flight test, but commencing no earlier than 8 years before he takes the written test (the existing earliest point in time to commence figuring).

Since these amendments are procedural in nature and result in providing applicants for the airman certificates affected an additional benefit, notice and public procedure thereon are not required.

In consideration of the foregoing, Parts 61, 63, and 65 of the Federal Aviation Regulations are amended, effective June 26, 1966.

These amendments are made under the authority of sections 313(a) and 601 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421)

Amendment 65–8 Postponement of Effective Date

Prerequisites for Written Tests; Postponement of Effective Date

Adopted: June 24, 1966 **Effective: August 15, 1966**

(Published in 31 F.R. 8913, June 28, 1966)

On May 27, 1966 (31 F.R. 7609), the Agency published amendments to Parts 61, 63, and 65 of the Federal Aviation Regulations to remove from the airman certification regulations all requirements that applicants for airman certificates meet aeronautical

experience requirements before taking the prescribed written tests, and to remove the requirement that an applicant for an airline transport pilot certificate must meet the general eligibility requirements (other than age) before taking the written test. The amendments were to become effective on June 26, 1966.

The amendments did not make any substantive changes in the requirements for any airman certificate. Their intent was to provide more flexibility in the order in which certain parts of the airman tests could be taken by applicants. The Agency had determined, in conformity with its policy of providing the best possible service to the public, and in order to reduce the required extent of applicants travel for certification purposes, that the showing of technical qualifying experience is necessary only before the prescribed oral, practical, or flight test required.

Since the publication of the amendments, the Agency has received several communications from certificated schools and airmen indicating that there may have been some misunderstanding of their effect on the character of airman standards. Although no specific examples have been furnished to show that the amendments would result in the lowering of substantive standards, the comments appeared to express apprehension that such might be the result.

In view of this possible misunderstanding, the Agency has determined that an extension of their effective date would be in the public interest to allow for the furnishing of any specific examples of possible adverse effect of the amendments on the quality of airman certification.

In view of the imminence of the effective date of the subject amendments, I find that notice and public procedure hereon are impracticable, and that good cause exists for making this amendment effective on less than 30 days notice.

In consideration of the foregoing, the effective date of Amendments 61–21, 63–4, and 65–8 is changed from June 26, 1966 to August 15, 1966.

This amendment is made under the authority of Sections 313(a) and 601 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a) and 1421).

Rescission of Amendment 65–8

Prerequisites for Written Tests

Adopted: August 12, 1966 **Effective: August 12, 1966**

(Published in 31 F.R. 10884, August 16, 1966)

On May 27, 1966 (31 F.R. 7609), the Agency published amendments to Parts 61, 63, and 65 of the Federal Aviation Regulation to remove from the airman certification regulations all requirements that applicants for airman certificates meet aeronautical experience requirements before taking the prescribed written tests, and to remove the requirement that an applicant for an airline transport pilot certificate must meet the general eligibility requirements (other than age) before taking the written test. The intent of the amendments was to provide more flexibility in the order in which certain parts of the airman tests could be taken by applicants. The Agency had determined, in conformity with its policy of providing the best possible service to the public, and in order to reduce the required extent of applicants' travel for certification purposes, that the showing of technical qualifying experience is necessary only before the prescribed oral, practical, or flight test required. Since the amendments were considered to be procedural in nature and to result in providing applicants for the airman certificates affected an additional benefit, notice and public procedure thereon were not considered required.

The amendments were to become effective June 26, 1966. After publication and before that date, the Agency received several communications from certificated schools and airmen indicating that there may have been some misunderstanding of the effect of the amendments on the character of airman standards and expressing apprehension that the amendments would result in the lowering of substantive standards. The Agency thereupon determined that an extension of the effective date of the amendments would be in the public interest, to allow for the furnishing of any specific examples of possible adverse affect of the amendments on the quality of airman certification. Accordingly,

on June 24, 1966, the effective date of the amendments was changed to August 15, 1966 (31 F.R. 8913, June 28, 1966).

Responsive to permission given by the extension of effective date, the Agency received communications from several sources including certificated mechanics and representatives of certificated mechanic schools asserting that the amendments would have an adverse effect on the quality of airman certification. Adverse effect would be caused, it was asserted, for instance, by fostering the taking of written tests, both original and retakes, by increased numbers of unqualified applicants on a "nothing to lose" basis and thereby making more difficult the proper composition, monitoring, and processing of these tests. Also, it was asserted, the standards for taking the written examination would be lowered and with them the high quality of mechanic standards overall that flows from a total "teaching-learning process". In other words, it was asserted that the amendments would encourage a student to take the written test before he has completed the "education phase" and if he is successful it could lessen the incentive for the student to become an educated technician. These views also were expressed at a conference held between the Agency and the representatives of certificated mechanic schools on August 2, 1966.

In view of these assertions and the imminence of the August 15, 1966, effective date, the Agency has determined that it would be in the public interest to rescind the amendments before they become effective. It is contemplated that a notice of proposed rule making on the substance of the amendments will be issued at an early date, to give all interested parties fuller opportunity to participate in the making of the proposed rules.

This rescission of the subject amendments leaves the affected portions of Parts 61, 63, and 65 exactly as they were prior to the issuance of the amendments on May 23, 1966.

In consideration of the foregoing, Amendments 61–21, 63–4, and 65–8 to Parts 61, 63, and 65 of the Federal Aviation Regulations, respectively, are rescinded, effective August 12, 1966.

This rescission is made under the authority of sections 313(a) and 601 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a) and 1421).

Amendment 65–9

Airman and Ground Instructor Administrative Requirements: Clarification

Adopted: October 14, 1966 **Effective: November 19, 1966**

(Published in 31 F.R. 13522, October 20, 1966)

The purpose of these amendments to Parts 61,* 63, 65, and 143 of the Federal Aviation Regulations is to resolve several inconsistent administrative requirements applicable to airman and ground instructor certificate holders, and to standardize these provisions. The requirements concern presentation of certificates for inspection; application during suspension or after revocation; changes of name, and replacement of lost or destroyed certificates; and retesting after failure (written and flight tests). Several additional changes clarify certain provisions or remove others that are considered unnecessary. The changes were proposed in Notice No. 66–9 issued on March 28, 1966 (31 F.R. 5324), except for those making consistent the provisions on return of certificates that are suspended or revoked.

Several comments concurred generally with the proposals. Other comments were addressed to individual proposals, principally those concerned with presenting certificates for inspection, and with clarifying and incorporating in § 61.39 the interpretation that a flight instructor may not log as instrument time (and receive credit for) periods when he is serving as a flight instructor but not manipulating the controls.

(1) *Presentation of certificates for inspection.* Three comments opposed adding Federal law enforcement officers to the list of persons to whom the holder of an airman or ground instructor certificate must present it for inspection upon request. One comment expressed apprehension that a law enforcement officer might use the regulations

* Parts 61, 63, and 143 are published separately.

to deprive an individual of his license. However, neither the proposed change nor the existing regulations (already requiring presentation upon request of the Administrator or an authorized representative of the Civil Aeronautics Board or of any State or local law enforcement officer) purport to extend to other agencies authority to enforce FAA safety regulations. The authority to enforce those regulations by a civil penalty or certificate action remains with the FAA, and only this Agency may suspend or revoke an airman certificate issued by it, subject to review by the CAB. This comment also questioned the existing requirements for presentation to other than authorized personnel of the regulatory agencies. However, the requirements, as expanded by these amendments, are appropriate to implement the enforcement of criminal provisions of the Federal Aviation Act of 1958 such as sections 902(b)—Forgery of certificates, and 902(i) through (m)—Aircraft piracy, etc. (for whose investigation the FBI is responsible), as well as to implement regulations issued thereunder and other regulatory provisions. The second adverse comment believed that presentation should be required only to authorized persons who understand what the certificates are, namely, the FAA and CAB. The concern of the third adverse comment was with the question who constitutes a law enforcement officer. However, no difficulty has been encountered in these respects in connection with the existing regulatory provisions, and none can reasonably be expected in the future.

(2) *Application during suspension or after revocation.* Several comments felt it was too harsh to prohibit a pilot whose pilot certificate has been revoked from applying for any pilot or flight instructor certificate or rating for one year, or to prohibit a person whose flight instructor certificate only is revoked from applying for any flight instructor certificate for one year. One of these comments suggested that a pilot who flies for a living could not sustain himself for a year without an opportunity to regain his certificate, and that he should be permitted to requalify without a time limit if he shows evidence of up-dating and training. These comments lose sight of the punitive as well as corrective nature of revocation action. Furthermore, the revocation order may allow application in less than one year.

(3) *Changes of name, and replacement of lost or destroyed certificates.* One comment objected to requiring a brief statement of the circumstances of loss or destruction of a certificate when a person applies for a replacement certificate. The Agency agrees that this requirement serves no useful purpose, and these amendments therefore omit the requirement from Part 61 where it already exists and from the additions made to the other Parts involved. This comment also criticized the requirement to supply documentary evidence verifying a change of name. However, this is a reasonable requirement to safeguard the integrity of certificates that, once issued, are reissued under changed names. Although the comment asserted that some people change their names without marriage or court order, it is reasonable to require at least some documentary evidence in such a case, as is permitted.

One comment mistakenly believed a "user charge" was being introduced into the regulations, that is, the $2.00 charge for a replacement certificate. This is not a new charge. The charge already was provided for in § 61.13 and the other regulations here involved merely repeat what is already included in Part 187.

(4) *Retesting after failure (written and flight tests).* One comment suggested that in § 61.27(d) as amended, the applicant for an airline transport pilot certificate or associated rating should be required, after a second failure of a maneuver of the flight test, to demonstrate competency on related maneuvers. These amendments make no substantive change at this time. A substantive change has been proposed by Notice No. 66-6 (31 F.R. 4735), upon which final action has not yet been completed.

(5) *Other changes.* As proposed, the word "civil" is inserted before the word "aircraft" in § 61.3(f), thus making the language of this prohibition concerning the lack of instrument rating consistent with § 61.3(a) concerning in general the lack of a pilot certificate. Also, § 61.3(f) is amended to reflect the changes recently made by Amendment 61-24, as well as those proposed by Notice No. 66-9.

Strong opposition was expressed to the proposed change in § 61.39(e) that would specifically express the limitation, already existing and confirmed by interpretation, that a flight instructor may not log (and receive credit for) as instrument time, periods when he is serving as a flight instructor but not manipulating the controls. Since the change is clarifying only, it is made as proposed. However, the Agency intends to fully reconsider this provision in view of the public response to Notice 66-9 and, if relaxation of the rule then appears appropriate, to issue a notice of proposed rule making in order to allow full public participation in making the rule change.

These amendments make the remaining changes proposed by Notice No. 66-9. In addition, the provisions requiring the return of suspended or revoked certificates are made consistent throughout these regulations. Thus, §§ 61.9(g), 63.15(b), 65.15(c), and 143.7(b) are all amended to provide that the holder of a suspended or revoked certificate shall, upon the Administrator's request, return it to the Administrator. This change was not proposed by Notice No. 66-9; however, since the provision is considered procedural only, notice and public procedure thereon is not necessary.

Interested persons have been afforded an opportunity to participate in the making of these amendments (except those concerning return of suspended or revoked certificates), and due consideration has been given to all matter presented.

In consideration of the foregoing, Parts 61, 63, 65, and 143 of the Federal Aviation Regulations are amended effective November 19, 1966.

These amendments are made under the authority of sections 313(a), 601, 602, and 607 of the Federal Aviation Act of 1958 (49 U.S.C. 1354, 1421, 1422, 1427).

Unnumbered Amendment

Technical Amendments to Reflect Transition to Department of Transportation

Adopted: April 4,1967 **Effective: April 1, 1967**

(Published in 32 F.R. 5769, April 11, 1967)

The purpose of these amendments is to make changes in the Federal Aviation Regulations that are necessary because of the taking effect of the Department of Transportation Act (49 U.S.C. 1651 et seq.) on April 1, 1967. On April 1, 1967, the Federal Aviation Agency became the Federal Aviation Administration in the Department of Transportation, and the aviation safety functions of the Civil Aeronautics Board under Titles VI and VII of the Federal Aviation Act of 1958 were transferred to the National Transportation Safety Board.

This rule-making action therefore changes the term "Federal Aviation Agency", wherever it occurs in the Federal Aviation Regulations, to "Federal Aviation Administration", and the word "Agency" when used alone to denote the Federal Aviation Agency to "FAA". For reasons of economy the editions of these regulations that are currently for sale will not be reprinted merely to make these changes. Whenever they are reprinted for other reasons, the printing changes will be made. However, the pages of Part 1 reflecting the changes in definition of the term "Administrator" and the abbreviation "FAA" will be reprinted as soon as possible.

The changes made in the Parts containing references to the Civil Aeronautics Board that are affected by the transfer of functions to the National Transportation Safety Board are self-explanatory. Pages containing these changes will also be reprinted as soon as possible.

Notice and public procedure thereon are not required since these amendments merely reflect changes of law, and they may therefore be made effective immediately.

In consideration of the foregoing, the Federal Aviation Regulations (14 CFR Chapter I) are amended, effective April 1, 1967.

These amendments are made under the authority of sections 3(e), 6(c) and 9(f) of the Department of Transportation Act (15 U.S.C. 1652(e), 1655(c), 1657(f) and section 313(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a)).

Amendment 65-10

Cross Reference Corrections in FAR Parts 61, 65, 141 and 147

Adopted: April 4, 1967 **Effective: April 10, 1967**

(Published in 32 F.R. 5770, April 11, 1967)

These amendments update certain cross references in the Federal Aviation Regulations and make other miscellaneous corrections.

At the time of the recodification, it was necessary to include in the Federal Aviation Regulations cross references to the Civil Air Regulations or Special Civil Air Regulations where the referenced provision had not yet been recodified. These amendments update

those cross references not previously updated. No substantive change is involved in these amendments. In some instances, the cross references as updated herein have been anticipated in compilations and reprints of the respective Parts of the regulations.

In addition, the term "Federal Air Surgeon" is substituted for the term "Civil Air Surgeon" in § 11.55 to correctly state the title of that official.

Since this amendment does not involve any substantive change and does not impose a burden on any person, notice and public procedure thereon are unnecessary, and the amendment may be made effective immediately.

In consideration of the foregoing, Chapter I of Title 14 is amended, effective April 10, 1967.

These amendments are made under the authority of section 313(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a)).

Amendment 65–11

Employment of Repairmen by Commercial Operators to Perform Maintenance

Adopted: September 20, 1967 **Effective October 27, 1967**

(Published in 32 F.R. 13505, September 27, 1967)

The purpose of these amendments to Parts 65 and 121 of the Federal Aviation Regulations is to permit a commercial operator certificated under Part 121 of the Federal Aviation Regulations to (1) employ a repairman to perform or supervise maintenance, preventive maintenance, and alterations on aircraft or components thereof, and (2) perform maintenance for, and have maintenance performed by other Part 121 certificate holders. This amendment was proposed as a Notice of Proposed Rule Making (Notice 67–8) issued on March 6, 1967, and published in the Federal Register on March 19, 1967 (32 F.R. 3946).

Consideration was given and an evaluation made of each of the six comments that were received in response to the notice. Two of the comments generally favored the proposal while four were opposed to it. Those comments in opposition expresed concern principally in two areas. First, that the adoption of the amendment, by permitting repairmen to be used by commercial operators, would lower maintenance standards. Secondly, that the extension of the privilege for use of repairmen to commercial operators would have a deteriorating effect by lowering the standards for persons to obtain repairman or A and P mechanic certificates.

The repairman certificate is issued by the FAA for specific duties requested and then only after substantiation of individual technical ability and background. The maintenance requirements in the regulations are the same for the air carrier and commercial operator, and both the air carrier and the commercial operator must comply with these maintenance requirements in order to retain their operating certificate. Permitting the commercial operator to use repairmen will enable the performance of maintenance for which the commercial operator is primarily responsible but which it has been precluded from doing. As the requirements for maintenance and compliance are unchanged, the standard of maintenance should not be lowered.

A misunderstanding of the effect of the amendment is evidenced by those comments that express concern that the use of repairmen by commercial operators will lower the standards of a repairman certificate or an A and P mechanic certificate. The same qualifications will be required of a repairman for a commercial operator as are now required to certificate a repairman for a repair station or air carrier. Furthermore, past experience with the repairman cetificate does not support the contention that extending the use of repairman to commercial operators will tend to have the repairman used in lieu of the A and P certificated mechanic. The repairman certificate was initiated for the purpose of enabling repair stations and air carriers to have certificated coverage

in facilities engaged in the maintenance of components and appliances where it is not necessary or practical to utilize the services of persons holding an A and P certificate. A further purpose was to enable the performance of major repairs or alterations of propellers and any repairs or alterations of instruments that Part 65 prohibits an A and P mechanic from performing. The amendment will extend to the commercial operator as well as the repair station and air carrier the privilege of using repairmen but with the purpose and standards for certificating repairmen remaining unchanged.

As stated in the notice, the commercial operator is required under Part 121 to perform maintenance under the same standards as the air carrier. The amendment will permit the commercial operator to carry out, in the same manner as the air carrier, its primary responsibility for maintenance, including all methods, techniques and practices, and for the competency of the airmen doing that work.

In consideration of the foregoing and for the reasons stated in Notice 67-8, Part 65 and Part 121* of the Federal Aviation Regulations are amended, effective October 27, 1967.

These amendments are issued under the authority of sections 313(a), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1422).

*Part 121 is published separately.

Amendment 65-12

Certain Airman Certificates Issued to Persons Other than U.S. Citizens—Deletion of 12-month Duration Limitation

Adopted: November 14, 1967 Effective: December 21, 1967

(Published in 32 F.R. 15918, November 21, 1967)

The purpose of these amendments is to delete the 12-month duration limitation for certain airman certificates issued to persons who are not U.S. citizens. The certificates affected are airline transport pilot certificates, pilot certificates with a lighter-than-air category rating, flight navigator and flight engineer certificates, and air traffic control tower operator, aircraft dispatcher, mechanic, and parachute rigger certificates and associated ratings.

These amendments were proposed in Notice No. 67-22 and published in the Federal Register on June 6, 1967 (32 F.R. 8094).

The original purpose for the 12-month certificate duration limitation was to provide a means for determining whether certificates issued to citizens of foreign countries should remain in force in the event the current reciprocal granting of airman privileges should be modified or terminated. Since the removal of the reciprocity requirement from the regulations, yearly renewal of these airman certificates serves no purpose, and the FAA has determined that the administrative workload associated with their renewal should be eliminated. The duration limitation has already been removed with respect to private and commercial pilot (heavier-than-air) certificates, which, like ground instructor certificates and ratings issued to persons other than U.S. citizens, have indefinite duration.

The public comments received on the Notice, with two exceptions, favored the proposal to eliminate the 12-month duration limitation. One unfavorable comment was concerned with an asserted preferential treatment of foreign nationals in the issuance of certificates. However, the purpose of the proposal, as stated, is to remove a burden upon the FAA and the airmen involved that no longer serves a useful purpose. The other unfavorable comment asserted that privileged status should be given to U.S. citizens, and that a noncitizen who wishes to be treated like a U.S. citizen should go through all the necessary requirements to become a citizen. However, this comment does not take into account the fact that eligibility for airman certificates does not depend upon citizenship.

To protect the interests of airmen holding certificates which, because of the 12-month duration limitation, will expire or have expired, the amendments provide that those airmen may obtain reissuance of the certificates without proof of technical ability. The certificate will be reissued to the holder without an expiration date. Unless the holder of an expired certificate obtains a reissuance, he will be unable to exercise any airman privileges under that certificate.

Interested persons have been afforded an opportunity to participate in the making of these amendments, and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, Parts 61, 63, and 65 of the Federal Aviation Regulations are amended, effective December 21, 1967.

These amendments are made under the authority of sections 313(a), 601, and 607 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1427).

Amendment 65–13

Reduction of Minimum Age for Air Traffic Control Tower Operator Certificate

Adopted: November 5, 1969 **Effective: December 14, 1969**

(Published in 34 F.R. 18226, November 14, 1969)

The purpose of this amendment to Part 65 of the Federal Aviation Regulations is to reduce the minimum age for eligibility for an air traffic control tower operator certificate from 21 to 18 years.

This amendment was proposed in Notice 69–25, issued on June 6, 1969, and published in the Federal Register on June 13, 1969 (34 F.R. 9347). Eight comments were received on the Notice, four of which concurred in the proposal. The other four comments opposed the proposal, generally on an asserted lack of maturity and judgment of persons only 18 years old. However, as stated in the Notice, although a person less than 21 years old would be eligible for a certificate he would not receive a rating to control aircraft at any particular airport until he shows the qualifications to perform the duties of an operator at that airport.

One opposing commentator stated he would concur if the proposed lowering of the minimum age were limited to controllers who were previously certificated as air traffic controllers in a military service. While the Notice referred to discharged military control tower operators as a ready source of trained recruits, it is not considered appropriate to limit the scope of the rule change to those persons, in view of the fact that a certificated operator would not receive a rating to control aircraft at any particular airport until qualified, regardless of whether he came from the military.

Interested persons have been afforded an opportunity to participate in the making of this amendment, and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, § 65.31 of the Federal Aviation Regulations is amended, effective December 14, 1969.

This amendment is made under the authority of sections 313(a), 601, and 602 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1422), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Amendment 65–14

Name, Operations, and Curriculum

Adopted: March 27, 1970 **Effective: May 3, 1970**

(Published in 35 F.R. 5331, April 3, 1970)

The purpose of these amendments to Part 147 of the Federal Aviation Regulations is to change the name of mechanic schools certificated under that Part to "aviation maintenance technician schools"; provide more specific guidelines for the certification and operations of these schools; and provide new minimum curriculum requirements, for both certification and operations purposes, that reflect technological advancements of the aviation industry. The amendments to Part 65 reflect the changed name of the schools, and remove inconsistent or obsolete provisions.

Interested persons have been afforded an opportunity to participate in the making of these amendments by a notice of proposed rule making (Notice 69–6) issued on February 26, 1969, and published in the Federal Register on March 4, 1969 (34 F.R. 3751). Due consideration has been given to all comments presented in response to that Notice.

Fifty-nine comments were received on the Notice, the majority of which favored the proposals. A number of the comments either objected to particular items proposed, or suggested alternatives.

(1) *Change in name.* As proposed in the Notice, these amendments substitute the designation "aviation maintenance technician school" for "mechanic school" in the title and text of Part 147. Most of the commentators favored this change of name, stating that it will reflect a more professional image and be more descriptive of the mechanic's job in today's advanced technology. One commentator proposed adding the phrase "FAA approved course" to distinguish this course from non-approved courses. However, this change is considered to be unnecessary.

(2) *More specific guidelines for certification and operations of schools.*

(a) *As to certification.* Two commentators opposed eliminating the requirement for test clubs for running-in engines, in § 147.15, asserting that test clubs are required to properly perform certain engine maintenance testing functions. The reason given in the Notice for the proposed rule change is that current engine manufacturers' overhaul procedures do not require using test clubs for running-in engines after overhaul. It was not intended to preclude the use of test clubs in properly performing engine maintenance testing functions. However, to avoid possible confusion and accommodate the use of test clubs, where related to schools' specific curriculum in use, the term "suitable facilities for running engines" is substituted in these amendments for the proposed requirement of "separate space with permanent, portable, or mobile test stands."

Four commentators disapproved of the use of the word "suitable" (proposed for use in additional paragraphs of § 147.15), asserting that the word lacks specificity and therefore is subject to a wide range of individual interpretations. The term "suitable" has previously appeared in six paragraphs of this section. As issued, the Notice merely proposed application of this flexibility to the other requirements for facilities and equipment.

One commentator stated that the proposed changes do not place enough emphasis on the regulation of the classroom noise level. The noise level problem is met by the new requirement for an enclosed separate classroom suitable for teaching theory classes. Two commentators stated that the proposed changes should allow for provision of a space consisting of a classroom and a laboratory. However, to have laboratory and classroom space together would not improve the capability for noise control at the classroom level.

A number of comments were directed to the proposal that under § 147.23 a school must provide at least one instructor, holding appropriate mechanic certificates and ratings, for each 25 students in each shop or laboratory class. Thus, one commentator suggested that the ratio be no more than 20 students to one instructor in theory classes and 12 students to one instructor in shop and laboratory classes, asserting that a ratio of 25 students to one instructor in a shop or laboratory class is too many students for

the instructor to control. On the other hand, several commentators opposed any limitation of this kind, characterizing it as too restrictive. The decision to have a specified ratio of students to instructors resulted from research and study, as well as from practical experience. The 25 to 1 ratio represents an upper limit, and it is not meant to suggest an ideal ratio. In fact, some schools normally employ ratios ranging from 20 to 1 down to 12 to 1.

(b) *As to operations.* Most of the commentators agreed with the proposed amendments to § 147.31 providing that a school may not credit a student with training received at that school prior to certification, and that a student may receive credit for previous experience to the extent that the experience is comparable to the required curriculum subjects. A few comments disagreed. However, as stated in the Notice, this amendment should encourage schools to seek certification without delay.

A large number of commentators favored the proposed Amendment to § 147.31 requiring schools to use an approved system for determining final course grades, and for recording and controlling student attendance. Some commentators expressed concern that the FAA standard of acceptability might not be standard among all inspectors; or that it difficult to have a rigid accounting of student class attendance at a collegiate-type school.

The proposed changes, requiring only that each school establish an approved system that is capable of controlling and recording attendance, without complete standardization, is considered sufficient to assure uniformity, as stated in the Notice.

A number of comments concerned the proposal to add to § 147.31 a provision that a school may not allow a student to attend classes of instruction more than 8 hours in any day or more than 6 days or 40 hours in any 7-day period. Several commentators asserted that this provision would prevent the student from attending make-up sessions, and other comments asserted that it would be desirable to allow the schools to give instruction for 48 hours in any 7-day period, as many students do not work and can carry the load. Other commentators suggested that the only limitation on student attendance should be the student's ability to maintain a 70% grade in all required subjects, or that students should not be allowed to receive course credit for attendance at courses other than during regularly scheduled hours of instruction, or that it should be possible to make up absences occurring because of sickness, strikes, holidays, and snow days. After further consideration, and in view of the comments and the fact that the schools may not require a student to attend classes of instruction for more than a specified number of hours, it has been determined not to implement this proposal.

Three commentators on the proposal to strike from § 147.35 the present requirement that the certificate issued (whether a certificate of completion or graduation) show the student's average grades, but to provide that the certificate reflect the student's standards of performance during the entire curriculum, asserted that such a showing is unnecessary since such a record is available from other sources. After further consideration and in view of these comments, it has been determined not to require the certificate to show either the average grades or standard of performance.

(3) *Minimum curriculum requirements.* The majority of the commentators agreed with the proposal, by amendment to § 147.21 and addition of appendices, to increase the number and type of items and subjects taught, and to indicate the levels of proficiency at which the items of subjects must be taught. Several comments questioned whether the general curriculum subjects must be taught as a separate curriculum from the airframe and powerplant curriculum subjects. This is not intended. The purpose of listing the general curriculum subjects separately is merely to avoid repetition.

A number of commentators opposed increasing the required numbers of hours of instruction. Principal comments stated that post-graduate high schools, technical institutes, and community colleges that operate on a 2-year curriculum would have problems with the increase in curriculum hours; and that the requirement that the curriculum show the required practical projects to be completed will be hard to enforce, and that it is impractical to list required projects for each school because of the changing nature of the aeronautical industry and the equipment involved.

As stated in the Notice, a national study of the aviation mechanics occupations was used as the basis for developing these curriculums. Approximately 507 tasks commonly

performed by mechanics were analyzed along with the results of a survey. The information collected showed the proportion of over 18,000 certificated mechanics who performed each task, the frequency with which the task was performed, and the degree of industry training involved. A National Advisory Committee, consisting of 15 members representing a broad segment of the aviation community, assisted in determining the tasks to be performed and the level of proficiency required of a student at a certificated school.

After careful review of all these suggestions, Appendix A is adopted as proposed. Appendix B is adopted with a change under the subject "Basic Electricty" that strikes out the words "conductivity and," so that the sentence reads "calculate and measure electrical power." Appendix C is adopted with the following changes: Item 36 is redesignated as Item 37 and the teaching level is raised to level 2. Item 37 is redesignated as Item 36 and the teaching level remains at level 1. Appendix D is adopted with one change: the teaching level of Item 1 is changed from level 2 to level 1.

The Notice proposed that each school have a maximum of 2 years from the effective date of these amendments to change to the new curriculm. Two commentators felt that a 2-year period would be inadequate for a school to decide whether it desires to retain its certification, and suggested a 5-year period. However, the 2-year period is considered a sufficiently long period for the purpose.

The amendments to Part 65 remove obsolete or inconsistent provisions. These amendments are minor in nature, effect no substantive change and are ones in which the public is not particularly interested. Notice and public procedure thereon are therefore unnecessary. The words "certificated mechanic school' 'are changed to "aviation maintenance technician school" in §§ 65.77 and 65.80, to conform with the new name in Part 147. In addition, these amendments add the words "or a certificate of completion" after the words "graduation certificate" in § 65.77 to conform with the change in Part 14. Also, the words "final phase of his training in the course curriculum" in § 65.80 are changed to "final subjects of his training in the approved curriculum" to conform with the change in Part 147.

In consideration of the foregoing, Parts 65 and 147 of the Federal Aviation Regulations are amended, effective May 3, 1970.

(Sections 313(a), 601, and 607, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1427. Section 6(c) of the Department of Transportation Act; 49 U.S.C. 1655(c)).

Amendment 65–15

Establishment of Facility Rating

Adopted: July 27, 1970 **Effective: August 31, 1970**

(Published in 35 F.R. 12326, August 1, 1970)

The purpose of these amendments to Part 65 of the Federal Aviation Regulations is to: (1) establish a "facility rating" that may be obtained by a certificated air traffic control tower operator who qualifies at all operating positions at a particular control tower; (2) provide that a certificated operator without that rating may control traffic at those operating positions for which he has qualified at a particular control tower, under the supervision of an operator holding a facility rating for that tower; and (3) drop the present junior and senior ratings.

Interested persons have been afforded an opportunity to participate in the making of these amendments by a notice of proposed rule making (Notice 70–12) issued on March 13, 1970, and published in the Federal Register on March 20, 1970 (35 F.R. 4862). Three public comments were received on the Notice. All of these comments concurred with, or had no objection to, the proposal. One commentator suggested minor changes to facilitate the exchange, and clarify the application of the practical test to operations in a VFR tower. These suggestions involve procedural matters which will be handled administratively.

Two minor changes are made from the proposal. First, the Notice proposed that an applicant for a facility rating who bases his eligibility on having previously held a facility rating at a different tower would be required to have held that rating for at least 6 months of the 2 years before the date he applies for the rating. The 2-year limitation has not been required previously, and upon further consideration it appears to be an unnecessary restriction that may prevent an otherwise competent controller from holding a facility rating. Therefore, the 2-year limitation has been omitted in these amendments. Second, the Notice proposed that an operator could not issue air traffic clearances for IFR flight without authorization from the appropriate air route traffic control center. Since a tower may be under the jurisdiction of some facility other than an air route traffic control center, the general term of reference "facility exercising IFR control" has been substituted.

As proposed, these amendments replace the system of qualifying a controller on the basis of his competence to control traffic in VFR or IFR weather conditions with a system of qualification by operating position, under which a controller who has qualified at an operating position may control air traffic under the supervision of another controller holding a facility rating without regard to the weather conditions, or type of air traffic controlled by that person. The amendments are now issued for the reasons stated in the notice, with the two minor changes discussed herein.

In consideration of the foregoing, Subpart B of Part 65 of the Federal Aviation Regulations is amended, effective August 31, 1970.

(Sections 313(a), 601, and 602 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1422), and section 6(c) of the Department of Transportation Act 49 U.S.C. 1655(c)).

Amendment 65–16

Changes in References to FAA Regulations, Position Title, and Certain Addresses

Adopted: August 27, 1970 **Effective: September 4, 1970**

(Published in 35 F.R. 14074, September 4, 1970)

The purpose of these amendments to Parts 61, 63, 65, 67, 141, and 143 of the Federal Aviation Regulations is to reflect in Parts 65 and 141 appropriate references to Part 430 of the Regulations of the National Transportation Safety Board; reflect in Part 67 an organizational change in the title of the FAA Assistant Administrator to FAA Regional Director; and update several references in the Regulations to the addresses to which applications for replacement of lost or destroyed certificates and certain other communications with the FAA are sent. These amendments also correct an inadvertent error made in a recent amendment to Part 65.

On April 1, 1967, the aviation safety functions of the Civil Aeronautics Board under Titles VI and VII of the Federal Aviation Act of 1958 were transferred to the National Transportation Safety Board (49 U.S.C. 1651 et seq.). Thereafter the Board issued Part 430 of its Regulations pertaining to aircraft accidents, incidents, overdue aircraft, and safety investigations, effective November 10, 1969 (34 F.R. 15749). These amendments accordingly change the references in Parts 65 and 141 to Part 430 of the Regulations of the National Transportation Safety Board instead of to Part 320 of the Regulations of the Civil Aeronautics Board.

The organizational title of FAA Assistant Administrator has been changed to FAA Regional Director, and this change is reflected in the amendments to Part 67.

The addition of "Department of Transportation" and box numbers *and* zip codes to addresses found in Parts 61, 63, 65, 67, and 143 serve to clarify and modernize mailing addresses to which applications for lost or destroyed certificates and certain other communications with the FAA are sent.

In Notice 70-12 (35 F.R. 4862) it was proposed that an air traffic control operator should not be authorized to issue air traffic control clearances for IFR flight without authorization from the appropriate air route traffic control center. In issuing Amendment 65-15 pursuant thereto (35 F.R. 12326) it was stated that a tower may be under the jurisdiction of some facility other than an air route traffic control center, and that therefore the general phrase of reference "facility exercising IFR control would be used. However, in the amended § 65.45(b) the phrase "air traffic control" was inadvertently used instead of "IFR control." These amendments correct that inadvertence by replacing "air traffic control" with "IFR control."

Notice and public procedure hereon are not required since these amendments merely reflect changes of law and procedures as well as the correction of an inadvertent clerical error, and they may therefore be made effective in less than 30 days.

In consideration of the foregoing, Parts 61, 63, 65, 67, 141 and 143 of the Federal Aviation Regulations are amended, effective September 4, 1970.

(Sections 313(a), 602, 608 of the Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1422, 1428. Sections 6(c) of the Department of Transportation Act; 49 U.S.C. 1655(c)).

NOTE: Corrections to addresses in Sections 65.16(b) and (c) and 65.21 are incorporated in the original printing of this basic volume.

Amendment 65-17

Airmen and Ground Instructors: Certain Additional Information in Application for Duplicate Certificates, and Expiration Date for Telegraphic Certificate

Adopted: February 5, 1971 **Effective: April 12, 1971**

(Published in 36 F.R. 2864, February 11, 1971)

The purpose of these amendments to Parts 61, 63, 65, and 143, of the Federal Aviation Regulations is to (1) require certain additional information in an application for a lost or destroyed airman or ground instructor certificate; and (2) provide a 60-day limitation on a telegram from the FAA confirming that the lost certificate was issued.

Interested persons have been afforded an opportunity to participate in the making of these amendments by a Notice of Proposed Rule Making (Notice 70-30) issued on July 23, 1970, and published in the Federal Register on July 31, 1970 (35 F.R. 12284). Due consideration has been given to all comments presented in response to that Notice.

Five of the seven public comments received on the Notice concurred in the proposals. Of the other two public comments, one opposed the proposals as an invasion of privacy because they require the inclusion of social security number in an application for replacement of a lost or destroyed certificate. However, as stated in the Notice, it is considered that requiring the applicant to state, in addition to the items previously required, his permanent mailing address (including zip code), social security number (if any), and date and place of his birth, will reduce the number of instances in which a duplicate certificate is issued to a person who is not entitled to it. The remaining commentator, although not specifically opposing the proposals, sought assurance against any possible delays in the issuance of telegraphic confirmations.

One commentator concurring in the proposals suggested the use of a standard application form, with confirmation of identity thereon through an FAA office before application. This suggestion is beyond the scope of the Notice, and in any event its net effect would be to impose an undue burden on the applicant for a duplicate certificate and to render the use of confirming telegrams unnecessary. Another commentator concurring in the proposals suggested that the request for telegraphic confirmation should also be an automatic request for a duplicate certificate. However, the relevant existing provisions already provide for this effect if the applicant chooses to use that method of application.

In consideration of the foregoing, and for the reasons stated in Notice 70–30, Parts 61, 63, 65, and 143 of the Federal Aviation Regulations are amended, effective April 12, 1971.

(Sections 313(a), 601, 602, and 607 of the Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1422, 1427. Section 6(c) of the Department of Transportation Act; 49 U.S.C. 1655(c)).

Amendment 65–18

National Weather Service

Adopted: July 20, 1971 **Effective: July 20, 1971**

(Published in 36 F.R. 13911, July 28, 1971)

The purpose of these amendments is to change the name Weather Bureau to read National Weather Service in the Federal Aviation Regulations. This change will affect §§ 1.1, 61.113, 61.143, 65.55, 121.101, 121.119, 121.651, 127.49, 135.65, and 141.47.

By virtue of Department of Commerce Organization Order 25–5B the name "Weather Bureau" has been changed to "National Weather Service," effective October 9, 1970. These amendments are necessary to make the Federal Aviation Regulations consistent with the name established by Order 25–5B.

Since the amendments to Parts 1, 61, 65, 121, 127, 135, and 141 are editorial in nature, I find that notice and public procedure thereon are unnecessary and that good cause exists for making them effective in less than 30 days.

In consideration of the foregoing, Parts 1, 61, 65,* 121, 127, 135, and 141 of the Federal Aviation Regulations are hereby amended, effective July 20, 1971.

These amendments are issued under the authority of sections 313(a) and 601 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a) and 1421), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

*Amended § 65.55(a)(3)

Amendment 65–19

Military Air Traffic Control Tower Operators— Experience Requirements for Facility Rating

Adopted: October 28, 1971 **Effective: December 6, 1971**

(Published in 36 F.R. 21280, November 5, 1971)

The purpose of this amendment to Part 65 of the Federal Aviation Regulations is to allow military air traffic control tower operators to meet the practical experience requirements for a facility rating at a particular tower by having at least 6 months of experience as an air traffic control tower operator. However, that experience need not be had (1) at that tower without a facility rating or (2) at a different tower with a facility rating there, as required of other control tower operators.

Interested persons have been afforded an opportunity to participate in the making of this amendment by a Notice of Proposed Rule Making (Notice 71–11) issued on April 23, 1971, and published in the Federal Register on April 29, 1971 (36 F.R. 8051). Due consideration has been given to all comments presented in response to the Notice.

Four of the seven public comments received in response to the Notice concurred in the proposal. The other three opposed the proposal. One of these asserted that the proposal would result in a derogation of safety. Another asserted that (1) if an Air Force controller were transferred frequently during the six month period, he might not acquire adequate practical experience; (2) under the proposed rule civilian and military controllers at joint-use facilities might not have the same qualifications; and (3) the proposed rule would lower standards without consideration of established air traffic control procedures and the need for maintaining the highest degree of safety in aviation. The third opposing commentator asserted that the facility ratings placed on certificates would be degraded.

The FAA does not agree that any of these asserted results will be caused by this rule. The rule does not entitle an Air Force controller to a facility rating so that he may immediately control air traffic. It only relieves him of waiting six months at a particular tower, if he has satisfactorily served elsewhere as an air traffic control tower operator for at least six months. He is still required to pass the skill requirements under § 65.37 that are applicable to each operating position in the tower at which the rating is sought. Safety would not be derogated because the rating will not be issued until the individual passes the practical test and demonstrates his competence as an air traffic control tower operator at the particular airport. It has therefore been determined to issue the amendment for the reasons stated in the Notice.

In its response to the Notice, the Directorate of Operations, United States Air Force, recommended changing "air traffic control tower operator" to "air traffic controller" so that the time served by controllers providing only radar approach control service could be applied to the six months experience requirement. However, this change is not necessary as to radar approach control service performed as an airport traffic control function of a particular tower. While performing this service a person is serving as an air traffic control tower operator, and the time involved is applied to the six months experience requirement.

In consideration of the foregoing, § 65.39 of the Federal Aviation Regulations is amended, effective December 6, 1971.

(Sections 313(a) and 601 of the Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421. Section 6(c) of the Department of Transportation Act; 49 U.S.C. 1655(c)).

Amendment 65–20

Parachute Riggers; Testing and Privileges

Adopted: June 26, 1972 **Effective: August 5, 1972**

(Published in 37 F.R. 13251, July 6, 1972)

The purpose of these amendments to Parts 65 and 91 of the Federal Aviation Regulations is to: (1) Provide that an applicant who fails a test for parachute rigger certificate may be retested upon the additional instruction and statement of a certificated senior parachute rigger; (2) provide that an applicant for a parachute rigger certificate may receive supervision on meeting his experience requirements from a certificated senior rigger; (3) change the requirements for applicants for master parachute rigger certificates; and (4) provide that a certificated senior parachute rigger may supervise other persons in packing any type of parachute for which he is rated. Also, two minor additional amendments are made to Part 65, and a definition of "approved parachute" is added in Part 91.

Interested persons have been afforded an opportunity to participate in the making of these regulations by a Notice of Proposed Rule Making (Notice 70–31) issued on July 24, 1970, and published in the Federal Register on July 31, 1970 (35 F.R. 12285). Due consideration has been given to all comments presented in response to that Notice.

Seven of the nine commentators (six of them holding master parachute rigger certificates) opposed allowing an applicant for a parachute rigger certificate who fails a

written, oral, or practical test to receive additional instruction from a certificated senior parachute rigger, or allowing supervision by a senior rigger in parachute packing to be credited toward meeting an applicant's experience requirements for certification. These adverse comments generally contended that senior riggers lack sufficient knowledge and experience to instruct or supervise other persons. The FAA does not agree with these assertions.

Under § 65.19(a), an applicant for a parachute rigger certificate who fails any of the prescribed tests may not apply for retesting until 30 days after the date he failed that test. However, previously under § 65.19(b)(4), if the applicant presented a statement from a certificated master parachute rigger, certifying that he gave the applicant at least 5 hours of instruction in the subjects failed and considered the applicant ready for retesting, the 30-day period did not apply. Section 65.19(b)(4) is now changed to allow the applicant to go to a certificated senior parachute rigger for this purpose. Since only a limited number of master parachute riggers are available, this change provides a wider group of qualified parachute riggers from whom the applicant may receive additional instruction before retesting. Whether the applicant waits the 30 days or receives the 5 hours of additional instruction from a qualified parachute rigger, he still must pass the prescribed tests before being eligible for a parachute rigger certificate and associated ratings.

These amendments to paragraph (a) of §§ 65.115, 65.123, and 65.125, as well as to § 65.19(b)(4), recognize that a certificated senior parachute rigger who is qualified to pack a parachute upon which a wearer may rely as a life-saving device would also have sufficient knowledge and experience to instruct and supervise other persons in packing that parachute. Furthermore, with respect to supervising parachute packing, under § 65.129(e) each certificated rigger, whether he holds a senior or master parachute rigger certificate, must pack a parachute for which he is rated in a manner that does not deviate from the procedures approved by the Administrator or the manufacturer of the parachute.

The commentators generally favored reducing the required time period of experience for a master parachute rigger certificate applicant from 5 to 3 years, although several suggested that any requirement should be based on actual experience and proficiency rather than a period of time over which the experience was acquired.

One commentator proposed that a senior parachute rigger should have a minimum period of experience and instructional capability before crediting any instruction received from him, and another suggested establishing a separate certificate for parachute rigger instructors. These suggestions are beyond the scope of the notice, but they will be fully considered by the FAA for possible future rule-making action.

The notice proposed removing from § 65.125(b) the word "instruct" as unnecessary, and the phrase "in the proper methods and procedures of construction" and the word "using" as obsolete. Paragraph (b)(2) in § 65.115, and § 65.119 as proposed in the notice, also referred to "use" as a subject covered in the written tests for senior and master parachute rigger certificates, respectively. However, questions on the "use" of parachutes have long been omitted from the actual written tests as not pertaining to parachute packing and maintenance. Accordingly, subparagraphs (b)(2) of § 65.115, and of § 65.119 as proposed in the notice, are amended by removing "use" as a subject in the written tests.

Additionally, paragraph (b) of § 65.115, and paragraph (b) of § 65.119 as proposed in the notice, provided that the written tests an applicant for a senior or master parachute rigger certificate must pass must cover one type, and two types, respectively, of parachutes in common use. Since 1950, all written tests have been directed to parachutes in general, rather than to any specific type. Accordingly, paragraph (b) of § 65.115 and of § 65.119 are amended to remove references to one type and two types of parachutes, respectively.

Both of these amendments to § 61.115(b) involve minor regulatory changes on which notice and public procedure are unnecessary.

In consideration of the foregoing, Parts 65 and 91 of the Federal Aviation Regulations are amended, effective August 5, 1972.

(Sections 313(a) and 601 of the Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421. Section 6(c) of the Department of Transportation Act; 49 U.S.C. 1655(c)).

Amendment 65–21

Carriage of Narcotic Drugs, Marihuana, and Depressant or Stimulant Drugs or Substances

Adopted: June 19, 1973 **Effective: August 1, 1973**

(Published in 38 F.R. 17491, July 2, 1973)

The purpose of these amendments to Part 91 of the Federal Aviation Regulations is to make the current prohibition in § 91.12(a) against the carriage in civil aircraft of narcotic drugs, marihuana, and depressant or stimulant drugs or substances between Mexico and the United States apply to the operation of civil aircraft anywhere within the United States. These amendments also make a violation of § 91.12(a), as well as a conviction for violating any Federal or State statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, and depressant or stimulant drugs or substances, a basis for denying applications for airmen certificates issued under Parts 61, 63, and 65 and a basis for suspending or revoking those certificates. In addition, a violation of § 91.12(a) is made the basis for suspending or revoking the operating certificate authority issued under Part 133 (rotorcraft external-load operations), Part 137 (agricultural aircraft operations), and Part 141 (pilot schools). Finally, this amendment to Part 91 (§ 91.84) requires an appropriate flight plan to be filed for the flight of civil aircraft between Mexico or Canada and the United States, unless otherwise authorized by ATC.

These amendments are based on a Notice of Proposed Rule Making (Notice 72–16) published in the Federal Register on July 4, 1972 (37 F.R. 13189).

A number of comments received in response to Notice 72–16 expressed opposition to regulation by the FAA in the area of narcotics control and appeared to question their justification. As explained in the preamble to the Notice, the current provisions of § 91.12(a) were adopted in 1969 (34 F.R. 13922) in recognition of the increasing hazard to safety in air commerce resulting from the increased use of civil aircraft for the illicit carriage of narcotics and other drugs into the United States. These hazards result from attempts to avoid detection or pursuit through violent maneuvers, low flying, flight in bad weather, and use of unsafe landing areas. Since 1969, information available to the FAA indicates that the illicit carriage of drugs by aircraft is occurring in various places within the United States, in violation of State as well as Federal statutes. Accordingly, in the interest of safety, this amendment extends the applicability of the current prohibition in § 91.12(a) to include the operation of civil aircraft anywhere within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

The current provisions of §§ 61.6 (§ 61.15 as of November 1, 1973) and 63.12, which were adopted in 1969 (34 F.R. 13922), make a violation of any Federal statute governing illegal activities involving narcotic drugs, marihuana, and depressant or stimulant drugs or substances, or a violation of § 91.12(a), a basis for denying applications for airmen certificates issued under Parts 61 and 63, and for suspending and revoking those certificates. This amendment expands those current provisions of §§ 61.6 and 63.12 to also encompass violations of State statutes governing such illegal activities. In addition, the amendment adds identical provisions to § 65.12 of Part 65, which governs the issuance of airman certificates to air traffic control-tower operators, aircraft dispatchers, mechanics, repairmen, and parachute riggers. As explained in the Notice, the FAA is adopting these amendments to Parts 61, 63, and 65 because it believes a demonstrated willingness to violate Federal or State statutory provisions governing the illegal activities specified, or a demonstrated willingness to violate § 91.12(a), clearly demonstrates a tendency to act without inhibition in an unstable manner and without regard to the rights of others, and clearly demonstrates that the applicant for a certificate would not be compliance minded regarding the many requirements necessary for safety in air commerce or air transportation.

The FAA also adopted in 1969 (34 F.R. 13922) amendments to Parts 121, 123, 127, and 135 which currently provide for the suspension or revocation of an operating certificate issued under those parts if the certificate holder permits any aircraft owned or operated by him to be engaged in any operation he knows to be in violation of § 91.12(a). This amendment adds the same provisions for certificate suspension or revocation to Parts 133, 137, and 141. As stated in the Notice, the rationale for these provisions is the FAA belief that the privileges inherent in those operating certificates can directly support, or even be essential to, the use of aircraft in smuggling narcotic drugs, marihuana, and depressant or stimulant drugs or substances. This is considered to be true regardless of whether the aircraft is being operated under the certificate at the time, since the corporate financial and management strength necessary to operate such aircraft largely flows from the operating certificates. As in the case of airman certificates, operating certificates can have the effect of providing a condition necessary to the use of the aircraft, by any person, in the hazardous business of smuggling. Furthermore, for the same reasons that support actions against airman certificates, the risk-taking willingness of the corporate or individual management of the holders of those operating certificates would clearly negate their ability to adhere to the conditions necessary for safety in air commerce or air transportation. The FAA considers this to be true, regardless of whether that risk-taking occurs by the certificate holder leasing the aircraft to other persons who smuggle the illegal items or by their operating the aircraft themselves in that business.

In addition to the foregoing, the justification for these amendments encompasses the equally important public interest factors that are directly opposed to the continued use of airman and operating certificates to support the aerial smuggling of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

As proposed, this amendment prescribes a new § 91.84 which requires persons operating civil aircraft on a flight between Mexico or Canada and the United States to file a VFR or IFR flight plan, as appropriate, unless otherwise authorized by ATC. In adopting this amendment the FAA considered the fact that Part 99 already requires a flight plan to be filed for flights between other countries and the United States and is of the opinion that the flight plan requirement will further assist the agency in conducting an effective safety enforcement program.

These amendments are issued under the authority of sections 307(c), 313(a), 601, 602, 604, and 607 of the Federal Aviation Act of 1958 (49 U.S.C. 1348(c), 1354(a), 1421, 1422, 1424, and 1427), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing, Parts 61, 63, 65, 91, 133, 137, and 141 of the Federal Aviation Regulations are amended, effective August 1, 1973.

Amendment 65–22

Inspection Authorization

Adopted: September 9, 1977 Effective: October 17, 1977

(Published in 42 FR 46278, September 15, 1977)

SUMMARY: This amendment is being issued to clarify current rules, and to adopt additional rules, applicable to applicants for, and holders of, an inspection authorization (I.A.). This action is necessary since the current rules have been the subject of considerable misunderstanding.

FOR FURTHER INFORMATION CONTACT:

Raymond E. Ramakis, Regulatory Projects Branch (AFS–940), Safety Regulations Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone (202) 755–8716.

SUPPLEMENTARY INFORMATION:

Interested persons have been afforded an opportunity to participate in the making of this amendment by a Notice of Proposed Rule Making (Notice No. 73–4) issued on January 29, 1973, and published in the Federal Register on February 6, 1973 (38 F.R. 3410). Due consideration has been given to all comments received in response to the Notice. Except as otherwise discussed in this amendment, the amendment and the reasons for it are identical to the proposal and the reasons set forth in the proposal.

Many of the three hundred and seventy-six comments received in response to the Notice expressed disagreement with proposed § 65.91(c)(2). That section would have required the applicant for an inspection authorization to have had diversified practical experience performing aircraft and aircraft engine maintenance during at least the two-year period before applying. Nearly all of the commentators in disagreement with this proposal objected to the use of the word "diversified" as being confusing, vague, or undefined. The FAA agrees that the words "diversified practical experience", as used in proposed § 65.91(c)(2), need further clarification and, accordingly, withdraws this proposal.

In addition, many commentators disagreed with proposed § 65.95(c) and (d). Paragraph (c) would have precluded the holder of an I.A. from exercising the privileges of his authorization outside of the area of jurisdiction of the local FAA District Office in which his fixed base of operation is located. Under paragraph (d), the holder of an I.A. changing the location of, or terminating inspection activity at, his fixed base of operation would have had to surrender the authorization to the local FAA District Office. Most of those opposing these proposals stated, in essence, that a mere change of geographical location has no effect on qualifications to exercise the privileges of an I.A. Others stated that the inability to use an I.A. outside the fixed base of operation would cause economic hardship.

After consideration of these comemnts, the FAA has determined that the holder of an I.A. should not be denied the use of his authorization when going outside the jurisdiction of his local FAA District Office or terminating inspection activity at, or changing the location of, his fixed base of operation, as provided in proposed § 65.95(c) and (d). Accordingly, these proposals are withdrawn.

Proposed § 65.94 would have required the holder of an I.A. to keep, and make available for inspection by the Administrator, a current record of inspections performed by him under § 65.95(a). While a preponderance of commentators favored this proposal, some contended that such requirement would impose an undue economic burden and others felt that it would not be beneficial to anyone. In light of the economic burden that this recordkeeping provision may impose, the FAA has decided to further evaluate the impact of proposed § 65.94. Accordingly, that proposed section is also withdrawn.

Proposed § 65.91(c)(1) was intended to clarify the current section by providing that an applicant for an I.A. would have to hold a currently effective mechanic certificate with both an airframe rating and a powerplant rating, each of which has been in effect for not less than three years. Moreover, under proposed § 65.92(a), the holder of an I.A. could exercise the privileges of the authorization only while he holds a currently effective certificate and ratings. While those proposed sections specified that the applicant for, or holder of, an I.A. must have a currently effective mechanic certificate, they did not expressly provide that the airframe and powerplant ratings held must also be current. Sections 65.91(c)(1) and 65.92(a), as adopted, make this clear. These requirements will ensure that the applicant for an I.A. is qualified to exercise the privileges of the authorization and remains qualified while he holds the authorization.

Paragraph (d) of current § 65.91 provides that an inspection authorization expires on March 31 of each year. That paragraph is revoked by this amendment since the provision contained therein is included in new § 65.92(a).

A review of comments received in response to the Notice indicates that proposed § 65.93 appears to have been misinterpreted by several commentators. The purpose of that proposal was merely to require that a person desiring to renew his I.A. must present the evidence currently required by that section at the local FAA District Office having jurisdiction over the area in which his fixed base of operation is located. The proposal was designed to relax the current requirement to submit that evidence at a more distant General Aviation District Office or International Field Office. However, as part of its Operations Review Program, the FAA is considering extensive revisions to current § 65.93, including a revision similar to that set forth in Notice 73–4. In light of this, the FAA concludes that it would be appropriate to consider all revisions to that section during the Operations Review, rather than implementing a single revision at the present time.

The FAA has conducted a preliminary evaluation of the impacts of the provisions adopted in this amendment. Based on that evaluation, it has been determined that the impacts of those provisions will be minimal and that an in-depth evaluation under the policy of the Secretary of Transportation and the Administrator (41 FR 16200; April 16, 1976) is not required.

The principal authors of this document are Irving Birnbaum, Flight Standards Service, and Danvers E. Long, Office of the Chief Counsel.

Accordingly, Part 65 of the Federal Aviation Regulations is amended, effective October 17, 1977.

(Secs. 313(a) and 601, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a) and 1421); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A–107.

Amendment 65–23

Operations Review Program

Amendment No. 4: Miscellaneous Amendments

Adopted: May 19, 1978 **Effective: June 26, 1978**

(Published in 43 FR 22636, May 25, 1978)

SUMMARY: The purpose of these amendments is to update and improve regulations concerning aircraft maintenance, airmen certification, and general operating and flight rules, parachuting, certification and operation of air carriers and commercial operators, air travel clubs, agricultural aircraft operations, repair stations, and aviation maintenance technical schools. These amendments are part of the Operations Review Program.

FOR FURTHER INFORMATION CONTACT:

Mr. D. A. Schroeder, Safety Regulations Division,
Federal Aviation Administration, 800 Independence Avenue, S.W.,
Washington, D.C. 20591; telephone: 202–755–8715.

SUPLEMENTARY INFORMATION:

HISTORY

These amendments are the fourth in a series of amendments to be issued as a part of the Operations Review Program. The following series of amendments have previously been issued as part of the Operations Review Program:

Title	*FR Citation*
Clarifying and editorial changes	(41 FR 47227; October 28, 1976)
Rotorcraft External-Load Operations	(42 FR 24196; May 12, 1977 amended by 42 FR 32531; June 27, 1977)
Airspace, Air Traffic and General Operating Rules	(To be issued at a later date)

These amendments are based on a Notice of Proposed Rule Making (Notice 76–28) published in the Federal Register on December 27, 1976, (41 FR 56280). All interested persons have been afforded an opportunity to participate in the making of these amendments and due consideration has been given to all matters presented. A number of substantive changes and changes of an editorial and clarifying nature have been made to the proposed rules based upon relevant comments received and upon further review by the FAA. Except for minor editorial and clarifying changes and the substantive changes discussed below, these amendments and reasons for their adoption are the same as those contained in Notice 76–28.

Five proposals which were contained in Notice 76–28, pertaining to Part 135, Air Taxi Operators and Commercial Operators of Small Aircraft, are not being dealt with here. They will be considered in conjunction with the proposals contained in Part 135 Regulatory Review Program, Notice No. 77–17: Air Taxi Operators and Commercial Operators (42 FR 43490; August 29, 1977).

Amendments to § 121.343(d), § 121.359(e), § 121.703(f), §127.127(d), and § 127.313(f) were not included in Notice 76–28. Since these amendments are editorial changes which reflect the National Transportation Safety Board's revised regulations, they are included in this amendment.

DISCUSSION OF COMMENTS

The following discussion is keyed to the like-numbered proposals contained in Notice 76–28.

Proposal 4–1. One commenter suggested that the word "knowingly" be inserted between "may" and "make" in paragraph (a) of proposed § 43.12 to clarify the intent behind the meaning of the word "fraudulent". The FAA does not believe it is necessary

to add the word "knowingly" since the proof of a fraudulent act is based on the person knowingly committing the act. Accordingly, the proposal is adopted without substantive change.

Proposal 4–2. No unfavorable comments were received on the proposal to revise paragraph (b)(2)) of Appendix E to Part 43. Accordingly, the proposal is adopted without substantive change.

Proposal 4–3. One commenter recommended clarification of the first paragraph of Appendix F to Part 43 which refers to an additional 3 decibel (db) tolerance allowed to compensate for antenna coupling errors during receiver sensitivity measurements. The commenter states this has been interpreted by some to mean ±1½db and by others to mean ±3db. After review, the FAA agrees and the proposed rule is changed by substituting the word "loss" for "tolerance."

After further review of paragraph (a), Appendix F to Part 43, the FAA believes the words "of the system" should be inserted between the words "frequency" and "is" to clarify that the antenna should be used during the transponder frequency check. Accordingly, proposed Appendix F to Part 43 is adopted as proposed except for the revisions discussed above.

Proposal 4–4. One commenter was against extending the effective date of a temporary certificate from 90 days to 120 days and suggested that the FAA's certificate handling facilities should be improved to provide more rapid service. The FAA believes that an addition of 30 days is necessary to handle the numerous applications received and to avoid the need for applicants to obtain renewal of the temporary certificate. The proposed change to § 61.17(a) with respect to inserting the number "120" in place of "90" was also proposed for § 63.13 and § 65.13 (Proposals 4–5 and 4–11 respectively) and commented on as above. Accordingly, proposed §§ 61.17(a), 63.13 and 65.13 are adopted without substantive change.

Proposal 4–5. For a discussion of comments related to the proposal to amend § 63.13 and for the disposition of that proposal, see Proposal 4–4.

Proposal 4–6. A comment was received which discussed matters not proposed in Notice 76–28. This comment is beyond the scope of the Notice and cannot be considered without further notice and public participation. For a discussion of comments related to proposed § 63.41(b) and for the withdrawal of that proposal, see Proposal 4–12.

Proposal 4–7. No unfavorable comments were received on the proposal to delete § 63.53(b) and (c). Accordingly, the proposal is adopted without substantive change.

Proposal 4–8. No unfavorable comments were received on the proposal to amend § 63.57(a) and therefore it is adopted without substantive change. However, the FAA believes the words "any part of" and "except the section on plotting and computing" in § 63.57(b) should be deleted since they are rendered unnecessary by the amendment to § 63.53 (see Proposal 4–7). Accordingly, the words discussed above are deleted from § 63.57(b).

Proposal 4–9. No unfavorable comments were received on the proposal to revise § 63.59(b) or (c) and the proposal is adopted without substantive change. For comments related to proposed § 63.59(a)(2) and deletion of the phrase "in the case of applicant's first failure" in proposed § 63.59(a)(2), see Proposal 4–12.

Proposal 4–10. Although there were no unfavorable comments to the proposed revision of Appendix A of Part 63, the FAA believes the proposal should be withdrawn since a substantial portion of the rule was inadvertently omitted. Accordingly, the proposal to revise Appendix A of Part 63 is withdrawn.

Proposal 4–11. For a discussion of comments relating to the proposal to amend § 65.13 and for the disposition of that proposal, see Proposal 4–4.

Proposal 4–12. Thirty-nine comments objected to the proposed amendments to § 65.19. Many commenters objected to limiting the number of retests to one within 30 days as proposed in § 65.19(b) in case of an applicant's first failure. These commenters stated that this restriction would place an unnecessary burden on applicants by increasing the time for certification without a commensurate increase in benefits or safety. Upon further review, the FAA agrees and the phrase "In the case of an applicant's first failure" in proposed § 65.19(b) is deleted.

The proposed change to § 65.19(b) with respect to the phrase "In the case of an applicant's first failure" is identical to the proposed change to §§ 63.41(b) and 63.59(a)(2) in Proposals 4–6 and 4–9 respectively. Accordingly, the proposed change to § 63.41(b) is withdrawn and the proposed change to § 63.59(a)(2) is amended to delete the above phrase.

Several commenters objected to proposed § 65.19(b) because it denied certified ground instructors the privilege of giving additional instruction to applicants in preparing them for retesting. The commenters stated that ground instructors were the only persons, other than flight instructors, who have been tested on their ability to teach various technical subjects. The FAA does not issue ground instructor ratings which are appropriate to teach air traffic control tower operator, aircraft dispatcher, parachute rigger, or mechanic applicants.

Since aviation safety and public interest demands that only persons who have demonstrated their technical knowledge and skill for a particular certificate should be qualified to provide instruction and certify competency for that certificate, the FAA believes the instructor must possess at least the same certificate and rating that the applicant is seeking to obtain. Accordingly, the proposal to amend § 65.19 is adopted as proposed with the revision discussed above.

Proposal 4–13. One commenter believed § 91.8 should be further expanded to include the prohibition against the interference with flight crewmembers before the aircraft is boarded. Since such a prohibition would be difficult to enforce and could give rise to jurisdictional problems, the FAA does not consider this prohibition a proper subject for rulemaking.

One commenter stated that proposed § 91.8(b) could apply to an aircraft owner who might ask the pilot to alter course or change destination. The commenter suggests clarifying the language. Another commenter expressed concern for the proposed wording of § 91.8(b) since it appears that a pilot examiner would be in violation by asking a private pilot applicant to divert from a course during a flight test. This was not the FAA's intent. The prohibition was directed toward unreasonable requirements, such as hijacking or requiring a change under duress. However, after further review, the FAA believes § 91.8(b) is not necessary since these acts are provided for in § 91.8(a). Accordingly, the proposal is adopted with the revisions discussed.

Proposal 4–14. No unfavorable comments were received on the proposal to revise § 91.15(a)(2). Accordingly, the proposal is adopted without substantive change.

Proposal 4–15. No unfavorable comments were received on the proposal to amend § 91.17. Accordingly, the proposal is adopted without substantive change.

Proposal 4–16. No unfavorable comments were received on the proposal to revise § 91.18(a). Accordingly, the proposal is adopted without substantive change.

Proposal 4–17. No unfavorable comments were received on the proposed revision to § 91.43(b). Accordingly, the proposal is adopted without substantive change.

Proposal 4–18. One commenter disagreed with the proposed revision to § 91.52(d)(2) that would require the new expiration date for replacement (or recharge) of the emergency locator transmitter's battery to be entered in the aircraft maintenance record and suggested the use of a placard located inside the cabin as a better solution. The FAA believes that a maintenance record entry is a more reliable method of determining the replacement date than a placard. Accordingly, proposed § 91.52(d)(2) is adopted without substantive change.

Proposal 4–19. Several commenters contended that proposed § 91.73(d) would be too restrictive and does not allow sufficient discretionary authority to the pilot in command as to when the anticollision lights should or should not be lighted. They state that the use of a strobe light as an anticollision light would create an unsafe condition during certain aircraft operation such as taxiing, takeoff and landing, if the pilot did not have the option to turn it off except during adverse meteorological conditions.

In light of these comments and upon further review, the FAA agrees that there are instances when the use of a high intensity anticollision light could induce vertigo

and cause spatial disorientation. Accordingly, § 91.73(d) is revised to provide that the pilot in command may turn off the anticollision lights at any time in the interests of safety.

Proposal 4–20. One commenter does not believe the word "nearest" in proposed § 91.83(d) conveys the operational procedure presently used by the FAA, and suggested it be changed. In light of this comment, and after further review, the FAA believes that any restrictive term is unnecessary and could possibly discourage the filing of flight plans. Accordingly, the words "the nearest" in proposed § 91.83(d) are deleted and the word "an" inserted.

Proposal 4–21. One commenter objected to the wording of proposed § 91.173 on the ground that it places an unwarranted burden on the owner or operator to determine such items as revision date, airworthiness directive (AD) number, and if an AD involves recurring action, the time and date when the next action is required. The commenter further stated that § 91.173 places responsibility on the owner or operator for the content of Part 43 maintenance record entries made by persons authorized by the FAA.

The FAA believes that the owner or operator should be responsible for the retention of the required maintenance records for the specified periods and furnish such records to the person authorized by the FAA to accomplish the work. The FAA believes that the owner or operator should also ensure that the appropriate information as prescribed in § 91.173 is entered in the maintenance records. The intent of the proposal is to require the retention of more specific information relating to ADS and their compliance. In addition, each person authorized to perform the maintenance is only responsible for the content of the required record entries. Accordingly, the proposed revisions to § 91.173(a), (b), and (a)(2)(v) and the addition of new (b)(3) are adopted without substantive change.

Proposal 4–22. One commenter who supported the proposed § 91.189(b)(5) suggested that attachment points for the lifeline be permanently installed on the wings of the aircraft. The FAA believes current § 25.1411(g) adequately covers lifeline attachment. Accordingly, proposed § 91.189(b)(5) is adopted without substantive change.

Proposal 4–23. The only public comment received on the proposal to amend paragraph 2(a)(7) of Appendix A to Part 91 recommended that radio altimeters be included in the proposed requirement but gave no further explanation. Since radio altimeters have markings at 20 feet or less intervals, the FAA believes that no reason exists at this time to include them in this amendment. Accordingly, the proposal is adopted without substantive change.

Proposal 4–24. No unfavorable comments were received on the proposal to revise § 105.15(b). Accordingly, the proposal is adopted without substantive change.

Proposal 4–25. One commenter supported proposed § 105.33(a) and (b) providing adequate exceptions exist for emergency situations, but did not state what type of exceptions he was referring to.

Another commenter contends that a light should not be displayed during free-fall because such a light decreases night vision and could possibly induce vertigo or spatial disorientation.

The FAA does not believe that such a light would significantly decrease night vision and induce vertigo or spatial disorientation. The FAA believes that a parachute jumper presents an object in the airspace from the instant the jumper exits the aircraft until the jumper reaches the surface. All that changes with the deployment of the chute is the speed the object is falling. A free-fall jump can extend through thousands of feet of airspace, presenting a hazard to air navigation. Accordingly, in the interest of safety, proposed § 105.33(a) and (b) are adopted without substantive change.

Proposal 4–26. No unfavorable comments were received on the proposal to amend § 105.43. Accordingly, the proposal is adopted without substantive change.

Proposal 4–27. No unfavorable comments were received on the proposal to revise § 121.11. Accordingly, the proposal is adopted without substantive change.

Proposal 4–28. No unfavorable comments were received on the proposal to amend § 121.26. Accordingly, the proposal is adopted without substantive change.

Proposal 4–29. No comments were received on the proposal to revise § 121.29(b). After further review, the FAA believes there is no current need for the proposed revision. Accordingly, proposed § 121.29(b) is withdrawn.

Proposal 4–30. No unfavorable comments were received on the proposal to amend § 121.47(a). Accordingly, the proposal is adopted without substantive change.

Proposal 4–31. No comments were received on the proposal to revise § 121.53(e). After further review, the FAA believes there is no current need for the proposed revision. Accordingly, proposed § 121.53(e) is withdrawn.

Proposal 4–32. No favorable comments were received on the proposal to revise § 121.61(b)(1). Accordingly, the proposal is adopted without substantive change.

Proposal 4–33. No unfavorable comments were received on the proposal to amend § 121.135(b)(6) and (7). Accordingly, the proposal is adopted without substantive change.

Proposal 4–34. No unfavorable comments were received on the proposal to amend § 121.191(a). Accordingly, the proposal is adopted without substantive change.

Proposal 4–35. The commenters to proposed § 121.309(b)(4) contend the proposal was unnecessarily redundant, served no useful purpose, and did not enhance safety. The commenters objected to this proposal from the standpoint that it would impose: (1) an unwarranted recordkeeping burden on operators utilizing an equipment control program that is controlled by hours or cycles and not by a specific inspection due date; (2) a risk of not having the inspection dates marked on the containers when equipment items were transferred from one ariplane to another; and (3) an additional task of changing inspection dates with possible resultant error.

In light of these comments and after further review, the FAA believes the proposal would possibly impose a burden not commensurate with its probable contribution to safety. Accordingly, proposed § 121.309(b)(4) is withdrawn.

Proposal 4–36. One commenter suggested the use of the phrase "no person" instead of "no passenger or crewmember" in proposed § 121.317(b). The FAA believes the phrase "no passenger or crewmember" is more definitive and the proposed wording is retained. Another commenter objected to the proposal on the grounds that there are instances when it is acceptable for cockpit crewmembers to continue to smoke and stated that this determination should be left up to the discretion of the cockpit crewmembers. The FAA disagrees. As a safety factor, flight crewmembers should be prohibited from smoking when the "no smoking" sign is lighted. Accordingly, proposed § 121.317(a) and (b) is adopted without substantive change.

Proposal 4–37. No unfavorable comments were received on the proposal to amend § 121.401(c). Accordingly, the proposal is adopted without substantive change.

Proposal 4–38. No unfavorable comments were received on the proposal to revise § 121.440(b)(2). Accordingly, the proposal is adopted without substantive change.

Proposal 4–39. Two comments were received on both proposed §§ 121.548 and 127.212 which discussed matters not proposed in Notice 76–28. These comments are beyond the scope of the Notice and cannot be considered without further notice and public participation. Accordingly, proposed § 121.548 and § 127.212 (Proposals 4–39 and 4–54 respectively) are adopted without substantive change.

Proposal 4–40. No unfavorable comments were received on the proposal to amend § 121.651(d)(2). Accordingly, the proposal is adopted without change.

Proposal 4–41. No unfavorable comments were received on the proposal to amend § 121.652(a). However, as stated in the preamble to Notice 76–28, the FAA believes the flight time, in order to be credited, must be acquired in the same "type" airplane. Accordingly, the proposal is adopted by inserting the word "type" to further clarify the intent of the rule.

Proposal 4–42. No unfavorable comments were received on the proposal to amend § 121.697(e)(2). Accordingly, the proposal is adopted without substantive change.

Proposal 4–43. No unfavorable comments were received on the proposal to revise § 121.723(a) and (b). However, in order to avoid the reissuance of certificates at the conclusion of each assignment, the wording is changed so that the certificate is retained

until termination of employment with the carrier or operator. Accordingly, the proposal is adopted with the change discussed.

Proposal 4–44. No unfavorable comments were received on the proposal to add a new § 123.11(b)(3). Accordingly, the proposal is adopted without substantive change.

Proposal 4–45. No unfavorable comments were received on the proposal to add a new § 123.12. Accordingly, the proposal is adopted without substantive change.

Proposal 4–46. No unfavorable comments were received on the proposal to revise § 123.13. Accordingly, the proposal is adopted without substantial change.

Proposal 4–47. No unfavorable comments were received on the proposal to revise § 123.15(a). Accordingly, the proposal is adopted without substantive change.

Proposal 4–48. No comments were received on the proposal to revise § 123.19(c). After further review, the FAA believes there is no current need for the proposed revision. Accordingly, proposed § 123.19(c) is withdrawn.

Proposal 4–49. No unfavorable comments were received on the proposal to revise § 123.27. Accordingly, the proposal is adopted without substantive change.

Proposal 4–50. No unfavorable comments were received on the proposal to revise § 123.41(a)(1). Accordingly, the proposal is adopted without substantive change.

Proposal 4–51. No unfavorable comments were received on the proposal to revise § 127.3. Accordingly, the proposal is adopted without substantive change.

Proposal 4–52. No comments were received on the proposal to revise § 127.21(b). After further review, the FAA believes there is no current need for the proposed revision. Accordingly, proposed § 127.21(b) is withdrawn.

Proposal 4–53. No unfavorable comments were received on the proposal to revise § 127.151(a). Accordingly, the proposal is adopted without substantive change.

Proposal 4–54. For a discussion of comments relating to proposed § 127.212 and for the disposition of that proposal, see Proposal 4–39.

Proposal 4–55. No unfavorable comments were received on the proposal to revise § 127.249(b). Accordingly, the proposal is adopted without substantive change.

Proposals 4–56 through 4–60. These proposals are included in the Part 135 Regulatory Review Notice 77–17: Air Taxi Operators and Commercial Operators (42 FR 43490; August 29, 1977). Comments received on the proposed amendments to Part 135 in Notice 76–28 will be considered in conjunction with other comments received in response to Notice 77–17.

Proposal 4–61. No unfavorable comments were received on the proposal to amend § 137.19(e). Accordingly, the proposal is adopted without substantive change.

Proposal 4–62. No unfavorable comments were received on the proposal to delete Part 149 "Parachute Lofts" and transfer those requirements to a new Subpart E in Part 145. However, after further review, the FAA believes the incorporation of Part 149 into Part 145 as proposed would create redundancy in the rules and cause confusion. Accordingly, the proposal to amend Part 145 is withdrawn.

Proposal 4–63. No unfavorable comments were received on the proposal to revise § 145.17(b). After further review, the FAA believes the words "surrendered, suspended, or," should be reinserted between the words "sooner" and "revoked" in § 145.17(b) since they appear in current § 145.17(b). This oversight is corrected in the adopted rule since it was not a change intended by the proposal. Accordingly, the proposal to revise § 145.17(b) is adopted as proposed except for the revision discussed above.

Proposal 4–64. No unfavorable comments were received on the proposal to amend § 145.59(a). Accordingly, the proposal is adopted without substantive change.

Proposal 4–65. No unfavorable comments were received on the proposal to revise § 147.31(c)(1) and to add a new § 147.31(c)(2). After further review, the FAA believes that the following editorial changes should be made: (1) in the proposed § 147.31(c)(1)(ii) the word "accreditation" is used in place of the word "certification" which appears in current § 147.31(c)(1). This oversight is corrected in the adopted rule since it was not the intent of the proposal to change the wording to accreditation; (2) the phrase "other than the crediting school" immediately following the word "accreditation" in proposed § 147.31(c)(1)(ii) was inadvertantly omitted and has been

included in the final rule. Accordingly, the proposal to revise § 147.31(c)(1) and to add a new § 147.31(c)(2) is adopted as proposed except for the revisions discussed above.

Proposal 4-66. Although there were no unfavorable comments to the proposed deletion and reservation of Part 149, the proposal is withdrawn for the reasons discussed in Proposal 4-62.

DRAFTING INFORMATION

The principal authors of this document are Thomas G. Walenta, Flight Standards Service, and Richard B. Elwell, Office of General Counsel.

ADOPTION OF THE AMENDMENTS

Accordingly, Parts 43, 61, 63, 65, 91, 105, 121, 123, 127, 137, 145, and 147 of the Federal Aviation Regulations (14 CFR Parts 43, 61, 63, 65, 91, 105, 121, 123, 127, 137, 145, and 147) are amended as follows, effective June 26, 1978.

(Secs. 313, 314, and 601 through 610 of the Federal Aviation Act of 1958 (49 U.S.C. 1354, 1355, and 1421 through 1430) and Sec. 6(c) of the Department of Transportation Act (41 U.S.C. 1655)).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Amendment 65-24

Exhibition, Air-Racing, and Amateur-Built Aircraft: Airworthiness Certificate and Repairman Certification

Adopted: August 2, 1979 Effective: September 10, 1979

(Published in 44 FR 46778, August 9, 1979)

SUMMARY: These amendments provide for the issuance of experimental certificates for exhibition, air-racing, and amateur-built aircraft for periods longer than one year and for repairman certification of the primary builders of these aircraft, who may then perform the required condition inspection on such aircraft. The purpose of these amendments is to reduce, without any derogation of safety, the burden on certain experimental aircraft owners associated with annual recertification by the FAA.

FOR FURTHER INFORMATION CONTACT:

Raymond E. Ramakis, Regulatory Projects Branch, AVS-24, Safety Regulations Staff, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

BACKGROUND

These amendments to Parts 21 and 65 of the Federal Aviation Regulations (FAR) are based on a Notice of Proposed Rule Making (NPRM) issued as Notice 79-4 and published in the Federal Register on March 5, 1979 (44FR 12042).

Notice 79-4 proposed to extend the duration of experimental certificates for aircraft certificated for the purpose of exhibition, air racing, or operating amateur-built aircraft for a period longer than one year. It also proposed that primary builders of these aircraft be eligible for repairman certification.

Interested persons have been afforded on opportunity to participate in the making of these amendments and due consideration hav been given to all matter presented. Two hundred and twelve comments pertaining to the proposals were received and they are discussed below.

Present section 21.181(a) (3) provides that an experimental airworthiness certificate is effective for one year after the date of issuance or renewal, unless a shorter period is prescribed by the Administrator. Generally, this has meant that aircraft having experimental certificates are recertificated annually by FAA inspectors. This recertification process has included a condition inspection performed by the FAA.

A recent survey indicates that there are about 9,000 aircraft on the U.S. Registry certificated in the experimental category; approximately 7,000 of these are certificated for the purpose of exhibition, air racing, or operating an amateur-built aircraft. This large and ever-increasing number of experimental aircraft, particularly the amateur-built, has resulted in extended delays for many applicants seeking certification or recertification of their experimental aircraft.

Extending the duration of these experimental certificates will relieve this burden on aircraft owners by eliminating the annual recertification by the FAA. Experience with the present rule has shown that safety considerations do not require that FAA inspectors conduct the annual recertification inspection of such aircraft provided that they are inspected in a manner similar to aircraft certificated in a standard category. To ensure an adequate level of safety, the FAA will impose an operating limitation during certification requiring that, at least once a year, the aircraft receive a condition inspection in accordance with Appendix D of FAR Part 43 and be found to be in a safe condition, and that an entry recording that inspection be made in the aircraft's maintenance records.

These inspections will be able to be conducted by a certificated mechanic holding an airframe and powerplant rating (A & P mechanic) or an appropriately rated repair station. In addition, these amendments will further reduce the burden on some owners by providing for the repairman certification under Part 65 of certain aircraft builders. If a person qualifies for certification, that individual will be allowed to perform the condition inspection on the aircraft that person has built. The builder's certification as an airman is required to satisfy Section 610 (a) (2) of the Federal Aviation Act of 1958 which makes it unlawful for any person to serve in any capacity as an airman without an airman certificate authorizing him to serve in this capacity.

These amendments are issued in accordance with Executive Order 12044 and the Department of Transportation's Regulatory Policies and Procedures which are intended to reduce the unnecessary burdens of regulation on the public.

DISCUSSION OF COMMENTS

A majority of the comments received in response to Notice 79-4 contained a recommendation that the duration of experimental certificates for amaueur-built, exhibition, and air-racing aircraft be permanent or for an indefinite period. Other commenters suggested that the duration of the certificates be for the length of time the aircraft is owned by the builder while some others would specify a certain number of years. The FAA agrees that once the aircraft has been shown to pose no hazard to the general public it should be certificated for an unlimited time. Since most experimental aircraft do not conform to an FAA approved type design and must be subject to a trial period of operation, the initial period of certification must necessarily be of limited duration. The FAA certificating inspector must retain the latitude needed to establish the initial certification period based on personal inspection of the aircraft and data presented by the applicant. Thereafter, following the initial certification and successful operation within the assigned flight test area for a specified period of time, it is the FAA intent that amateur-built, air racing, and exhibition aircraft be given an experimental certificate of unlimited duration. The rule therefore provides that such aircraft will be certificated for an unlimited period unless the Administrator finds for good cause that a specific period should be established.

The FAA will monitor the safety record of the aircraft certificated under this new rule. Should it appear at any time in the future that certificates of specific duration are required in order to safeguard the general public, appropriate rule making action will be taken.

One commenter objected to the proposal on the ground that it was unsafe. His major concern was that the work on these aircraft be accomplished by an A & P mechanic or under his direct supervision. As an alternative to the proposal contained in Notice 79-4, the commenter suggested that the construction of experimental aircraft be under the craftsmanship or direct supervision of a certificated mechanic, and that a mechanic holding an inspection authorization rating reissue the experimental certificate at the

time of the annual inspection which would be conducted by such an inspector. The FAA has had a long-time policy of encouraging assistance of qualified private persons during aircraft construction and believes that amateur-aircraft builders should continue to utilize those persons if the need arises. A delegation of authority for issuance of experimental certificates, however, is not warranted. The FAA wishes to retain the responsibility for certification, including a determination that the aircraft is in a condition for safe operation, and for prescribing appropriate operating limitations. With respect to the conduct of the annual recurring condition inspection, the FAA has concluded that an inspection by the original builder if he holds a repairman certificate, an A & P mechanic, or a repair station holding appropriate ratings can provide a satisfactory level of safety.

As suggested above, the FAA concurs with the suggestion of several commenters that appropriately rated repair stations be allowed to conduct the annual inspection. No additional rule change is required to implement this decision.

In order to increase the time available to FAA inspectors for other required functions, one commenter suggested that A & P mechanics perform the in-progress construction inspections. He also objected to the issuance of repairman certificates to "so-called aircraft builders," many of whom, he contended, do not build the aircraft and lack building and maintenance skills. It is during the in-progress inspection that FAA inspectors can concurrently inspect the aircraft and begin their assessment of the builder's skills and qualification for repairman certification. Only qualified builders will be certificated. Thus, it is important that the FAA maintain its inspection role during aircraft construction. This commenter's contention that the repairman certification process and repairman surveillance will be a drain on the FAA inspectors' time is rejected. As already noted, much of this one-time determination of qualification will be made during the construction.

One commenter suggested that A & P mechanics were not sufficiently qualified to make the required condition inspection of certain sophisticated aircraft, such as ex-military and jet aircraft, and suggested that a mechanic holding inspection authorization should be required in these cases. Another commenter suggested that certificated mechanics with inspection authorization be required in all cases. The FAA disagrees. The scope of the recurring condition inspection is the same as that required for a 100-hour inspection of standard category aircraft. Since A & P mechanics have long been permitted to conduct 100-hour inspections, there is no reason to doubt their ability to conduct this inspection of experimental aircraft. Furthermore, under § 65.81 a certificated mechanic may perform only the maintenance for which he is rated and that only if he has satisfactorily performed the work concerned at an earlier date.

Several commenters objected to the issuance of a repairman certificate to the original builder of an amateur-built aircraft. Their concern was that the builder may have no experience in the inspection or detection of conditions causing or leading to defects in the aircraft. They also stated that, for the most part, the amateur-aircraft builder lacks the facilities and equipment necessary to maintain the aircraft, and therefore the annual inspection should be conducted by an authorized inspector. Those original builders who obtain repairman certification will have demonstrated, to the satisfaction of the FAA, sufficient knowledge and skill to allow them to inspect the aircraft they have built. The concern over lack of facilities is not valid. Under the present rule, the FAA inspector conducts the recertification inspection, for the most part, using the same facilities and equipment available to the aircraft owner.

Another commenter objected on two grounds. First, he asserted that having built a part of the aircraft does not qualify a person to inspect all of that aircraft. For example, he noted that while a home-built constructor may actually have built only a part of the airframe, his repairman certificate would permit him to inspect a powerplant, electrical, or hydraulic component of which he may not have sufficient knowledge. In this connection the scope and detail of the Part 43, Appendix D, inspection does not require extensive knowledge of such systems. It should be noted that in the case of repair stations, one which has only an appropriate airframe rating may conduct the inspection. Second, he objected to the fact that the FAA was turning over much administrative work to the general public rather than to a professional member of the aviation community. In fact, as a result of the adoption of these amendments there should be less administrative work since there will be no need for the owner to make annual application for recertification.

One commenter objected to the proposal on the ground that its adoption will impose a financial burden on owners who are not the original builders. Additional cost will be required for condition inspections. However, it is the conclusion of the FAA, apparently supported by most commenters who support the proposal, that such cost will be more than offset by relief from the time delays associated with seeking recertification of their aircraft by the FAA and by the added flexibility made available for selecting the time and place of inspection.

In a related matter, several commenters suggested that the services of an FAA inspector be available to owners of amateur-built aircraft who are not the original builders when they are unable to secure an inspection from a certificated A & P mechanic. In those cases where an owner can show inability to get an inspection, he may apply for the services of an FAA inspector. In addition an owner may also utilize an appropriately rated repair station to perform the required inspection.

Several commenters proposed that Experimental Aircraft Association designees be authorized to perform the condition inspection. As in the case of those owners who are not the original builders, the FAA would not have a standard by which to judge the knowledge and skills of these persons.

Two commenters suggested that persons who have constructed an aircraft from a kit should not be eligible for a repairman certificate. Furthermore, one of these commenters stated his belief that a repairman certificate should only be issued to a builder whose workmanship is of acceptable quality. It should be noted that according to Advisory Circulars 20-27B, dated April 20, 1972, and 20-28A, dated December 29, 1972, aircraft which are merely assembled from kits composed completely of prefabricated components and parts, and pre-cut pre-drilled materials, are not eligible for certification as amateur-built aircraft, since the major portion of the aircraft would not have been fabricated and assembled by the builder as is required by FAR § 21.191(g). Although there is not a specific quality of workmanship requirement for receiving a repairman certificate, this is implicit in requiring that a person demonstrate to the satisfaction of the Administrator the requisite skill to determine whether the aircraft is in a condition for safe operation.

Several commenters suggested that a repairman certificate be made available to all owners of amateur-built aircraft after they demonstrate the required level of knowledge and skill needed to maintain their aircraft. Extending repairman certification to all owners of amateur-built aircraft would be impracticable because the FAA does not have a standard by which to judge the knowledge and skills of owners who have not built their aircraft. The FAA conducts inspections of amateur-built aircraft at various stages of their construction. In this way, the builder is able to demonstrate the knowledge and skills considered necessary for conducting an inspection and determining that the aircraft will be in a condition for safe operations.

Because this observation of the builder and his work is the essential means for determining a builder's knowledge and skill required for issuance of a repairman certificate, the FAA rejects the suggestion of one commenter that a written examination be required. If such an examination is considered necessary, it can be required by administrative means; a regulation is not required.

One commenter suggested that once issued a repairman certificate on the basis of having built an amateur-built aircraft, a person should be allowed to inspect other amateur-built aircraft. Another commenter stated that the condition inspection should be able to be performed by any amateur builder who had built an aircraft of the same type. The FAA cannot accept these suggestions. Although many amateur-built aircraft may be of similar type, they are not fabricated to a type design or specification and the builders frequently make changes based on personal desires or the availability of materials. These changes are often significant. Thus, the original builders may possess the expertise to inspect the aircraft they have built but not one built by another person or one of similar type.

Several commenters requested that the original builder of an amateur-built aircraft be allowed to continue to conduct the required inspection of the aircraft after its sale to a new owner, if the new owner so desired. Although the proposal did not address the situation directly, it was intended that the qualified original builder be allowed to continue to inspect the aircraft after its sale, at the request of the new owner.

Several commenters suggested a "grandfather" clause be applied to the issuance of repairman certificates to allow present amateur-built owners who are not the builders of

the aircraft to be eligible for a repairman certificate. These commenters believe that since they have been performing their own maintenance and repairs under the present rule they should be qualified to perform the annual condition inspection under the new rule. A "grandfather" clause for amateur-built owners who are not the builders is not warranted. The nonbuilders do not have the privilege of performing the annual condition inspection under the present rule; therefore, they cannot be "grandfathered" to perform it under the new rule. As previously stated, the original builders are the ones who most likely will possess the expertise to inspect the aircraft they have built. To issue repairman certificates to amateur-built aircraft owners who are not the builders on the basis of their performing maintenance would require that the FAA issue repairman certificates to the present owners of exhibition and air-racing aircraft for the same reason. This would not be in the interest of safety.

One commenter proposed that the original builder be allowed to sign-off the recurring inspection and repairs performed by subsequent owners. As stated above, it is not in the interest of safety to allow nonbuilders to conduct the required inspection. Furthermore, while the FAA recognizes that qualified original builders have sufficient expertise to perform the inspection, it does not necessarily follow that they are sufficiently qualified to approve or disapprove another person's maintenance.

Several commenters proposed deletion of the citizenship requirement to be eligible for a repairman certificate. One of the commenters is a Canadian citizen who was admitted to the U.S. as a permanent resident and now holds an FAA Repairman Certificate. It is also noted that Section 501(b) of the Federal Aviation Act of 1958 was recently amended to allow an individual citizen of a foreign country who has been admitted to the United States as a permanent resident to register aircraft. Therefore, proposed section 65.104(a)(4) is revised to provide for the issuance of a repairman certificate to an individual citizen of a foreign country who has lawfully been admitted for permanent residence in the United States.

Two commenters suggested an annual inspection certificate be executed by the person performing the condition inspection. The original would be contained in the logbook with a copy sent to the local district office. An annual inspection certificate is not deemed necessary. The amendment provides for the FAA to impose operating limitations requiring the condition inspection to be reached in the aircraft's maintenance records. In the case of standard category aircraft, no certificate is issued. An entry is made in the maintenance records. This should be sufficient for experimental aircraft. However, in line with these comments, the FAA does make available an annual inspection reminder. This reminder is a decal which is secured in a conspicuous area in the aircraft and reminds the operator of the next inspection date.

One commenter suggested that the FAA perform spot checks to ensure the quality of maintenance and condition inspections of these experimental aircraft. This is an ongoing function of the FAA as to all aircraft and such surveillance will continue.

Several commenters suggested revising the applicapility of Part 43 to include experimental aircraft and to require that they be inspected in accordance with Part 91. Applying such restrictions would be contrary to the intent of the amateur-built aircraft program, which is fabricating and assembling an aircraft for educational or recreational purposes. In addition, many exhibition and air-racing aircraft are ex-military aircraft and applying Parts 43 and 91 to them would be excessively restrictive on their owners.

One commenter expressed his belief that an advisory circular giving inspection guidelines is needed. While advisory material is going to be released concerning these amendments, no inspection guidelines advisory circular is planned. Appendix D of FAR Part 43 is considered to be adequate.

One commenter suggested that an airworthiness certificate be renewed by an FAA inspector or a certificated mechanic holding an inspection authorization if there is a lapse in the recurring condition inspections to prevent the sale of an unsafe aircraft to an unsuspecting person. Such a provision in the regulation is not needed. The operating limitations will not permit flight of an aircraft unless during the previous twelve months it has been inspected and found to be in safe condition.

Several commenters suggested that the repairman certificate be issued after the aircraft has flown off its initial restriction. While it is anticipated that the certificates will be issued at this time, such a decision is being retained as a matter for policy determination.

One commenter also wanted to require that the owner be in possession of the applicable service manuals and plans before repairman certification. Since some amateur-built aircraft do not even have plans, such a regulation is not considered appropriate.

Two commenters made proposals, neither of which is related to the rule changes proposed in Notice 79-4. One suggested that an experimental certificate be converted to a standard airworthiness certificate after a specified period of satisfactory operation and inspection. The FAA cannot accept this proposal. Standard category airworthiness certificates are issued only after an exacting and detailed finding that the design meets specific regulatory requirements. The mere operation of an experimental aircraft with limited inspections falls far short of the detailed compliance findings required for issuance of a standard airworthiness certificate.

The other commenter proposed to amend § 21.191 to permit the issuance of experimental certificates for the purpose of operating certain nonstandard aircraft for recreation. A similar proposal by that commenter in the form of a petition for rule making has already been denied.

ADOPTION OF THE AMENDMENT

Accordingly, Parts 21 and 65 of the Federal Aviation Regulations (14 CFR Parts 21 and 65), are amended effective September 10, 1979.

(Sections 313(a), 601, and 602 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1422; sec. 6(c) of the Department of Transportation Act 49 U.S.C. 1655(c)).

NOTE.—The Federal Aviation Administration has determined that this document involves a regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A copy of the Final Regulatory Evaluation is filed in the Public Docket. Copies of this evaluation may be requested from Raymond E. Ramakis, Regulatory Projects Branch, AVS-24, Safety Regulations Staff, Federal Aviation Administration, 800 Independence Ave., S.W., Washington, D.C. 20591; telephone (202) 755-8716.

Amendment 65-25

Air Traffic Control Tower Operators: Medical Standards

Adopted: March 17, 1980 **Effective: April 23, 1980**

(Published in 45 FR 18911, March 24, 1980)

SUMMARY: This regulation excepts air traffic control tower operators who are employed by the FAA from the requirement that they hold a second class medical certificate. This revision is necessary to avoid the application of two different programs for physical qualification to FAA employees.

FOR FURTHER INFORMATION CONTACT:

Edward Harris, Data Systems Management Division (AMS-300), Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; telephone (202) 426-8067.

SUPPLEMENTARY INFORMATION:

An air traffic control tower operator is an airman, as defined in section 101 of the Federal Aviation Act of 1958 (the Act). In accordance with section 602 of the Act, the Administrator, in issuing an airman certificate to an applicant, determines whether the applicant is physically able to perform the duties pertaining to the position for which the airman certificate is sought. In accordance with this statutory mandate, § 65.33 of the Federal Aviation Regulations (14 CFR 65.33) requires that an applicant for an air traffic control tower operator certificate hold a second class medical certificate issued under Part 67, Medical Standards and Certification (14 CFR Part 67).

Even though other FAA employees with air traffic control (ATC) duties (enroute air traffic controllers and flight service station operators) are not airmen, as difined in he Act, the FAA has also required these persons to meet physical standards. A physical qualification program for all FAA ATC personnel, including control tower operators, was developed by the Civil Service Commission in the early 1960's. The availability of forms and guidelines that were being used in connection with Part 67 facilitated the administration of this program.

Recently, the agency requested the Office of Personnel Management to revise the physical standards for retention of ATC personnel. The proposed new standards further differentiate between requirements applicable to FAA personnel and the certification requirements in Part 67.

In order to avoid the application of two different programs for physical qualification to FAA employees, this amendment revises §§ 65.31 and 65.33. It excepts FAA employees from the requirement to hold a second class medical certificate in order to be eligible for, and to exercise the privileges of, an air traffic control tower operator certificate.

Part 65 still requires that non-FAA control tower operators hold second class medical certificates. Section 61.23(b)(1) is being revised to make clear the 12-month duration of the second class medical certificate as it applies to these non-FAA control tower operators.

ADOPTION OF THE AMENDMENT:

Accordingly, Parts 61 and 65 of the Federal Aviation Regulations (14 CFR Parts 61 and 65) are amended effective April 23, 1980.

(Secs. 313(a), 601, and 602 of the Federal Aviation Act of 1958 (49 U.S.C. § 1354(a), 1421, and 1422); and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. §§ 1655(c)).)

NOTE—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA has determined that the expected impact of the regulation is so minimal that it does not require an evaluation.

Amendment 65-25A

Air Traffic Control Tower Operators: Medical Standards

Adopted: April 17, 1980 **Effective: May 7, 1980**

(Published in 45 FR 22745, April 24, 1980)

SUMMARY: This action delays the effective date of Amendments Nos. 61-68 and 65-25 to the Federal Aviation Regulations which except air traffic control tower operators who are employed by the FAA from the requirement that they hold a second class medical certificate. This delay is necessary for administrative reasons.

FOR FURTHER INFORMATION CONTACT:

Mr. Edward Harris, Office of Management Systems (AMS-300), Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; telephone (202) 426-8067.

SUPPLEMENTARY INFORMATION:

On March 17, 1980, the FAA issued Amendments Nos. 61-68 and 65-25 (45 FR 18911; March 24, 1980). Amendment No. 61-68 revises §§ 65.31 and 65.33, to except FAA employees from the requirement to hold a second class medical certificate in order to be eligible for, and to exercise the privileges of, an air traffic control tower operator certificate. Amendment No. 65-25 revises § 61.23(b)(1) to make clear the 12-month duration of the second class medical certificate as it applies to non-FAA control tower operators.

The FAA has determined that a delay in the effective date of these amendments is necessary for administrative reasons.

CHANGE OF EFFECTIVE DATE

Accordingly, the effective dates of Amendments Nos. 61-68 and 65-25 to Parts 61 and 65 of the Federal Aviation Regulations (14 CFR Parts 61 and 65) are changed to May 7, 1980.

(Secs. 313(a), 601, and 602 of the Federal Aviation Act of 1958 (49 U.S.C. §§ 1354(a), 1421, and 1422); and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. § 1655(c)).)

NOTE—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA has determined that the expected impact of the regulation is so minimal that it does not require an evaluation.

Amendment 65-26
Operations Review Program: Amendment No. 9
Adopted: July 1, 1980 Effective: September 9, 1980

(Published in 45 FR 46736, July 10, 1980)

SUMMARY: These amendments update and improve certain requirements applicable to general operations and flight, to airmen other than flight crewmembers, and to domestic, flag, and supplemental air carriers and commercial operators of large aircraft. These amendments are part of the Operations Review Program and are based on a compilation of proposals discussed at the Operations Review Conference.

FOR FURTHER INFORMATION CONTACT: Mr. Norman C. Miller, Regulatory Review Branch, AVS-22, Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone: (202) 755-8714.

SUPPLEMENTARY INFORMATION:

History

This amendment is issued as part of the Operations Review Program. The following amendments have previously been issued as part of this program:

	Title and Federal Register (FR) Citation
Amendment No. 1:	Clarifying and Editorial Changes (41 FR 47227; October 28, 1976).
Amendment No. 2:	Rotorcraft External-Load Operations (42 FR 24296; May 12, 1977 and 42 FR 32531; June 27, 1977).
Amendment No. 2A:	Special Federal Aviation Regulation No. 36, Development of Major Repair Data (43 FR 3084; January 23, 1978).
Amendment No. 3:	Airspace, Air Traffic, and General Operating Rules (44 FR 15654; March 15, 1979).
Amendment No. 4:	Miscellaneous Amendments (43 FR 22636; May 25, 1978).
Amendment No. 5:	Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft (43 FR 22643; May 25, 1978, 43 FR 28403; June 29, 1978, and 44 FR 25201; April 30, 1979).
Amendment No. 6:	General Operating and Flight Rules and Related Airworthiness Standards and Crewmember Training (43 FR 46230; October 5, 1978).
Amendment No. 10:	Airworthiness, Equipment, and Operating Rules (44 FR 61323; October 25, 1979).

These amendments are based on Notice of Proposed Rule Making 78-11 published in the Federal Register on August 17, 1978 (43 FR 36464). Interested persons have been given an opportunity to participate in the making of these amendments and due consideration has been given to all matters presented. A number of substantive changes and changes of an editorial and clarifying nature have been made to the proposed rules based upon relevant comments received and upon further review by the FAA. Except for minor editorial and clarifying changes and the substantive changes discussed below, these amendments and reasons for their adoption are the same as those contained in Notice 78-11.

Discussion of Comments

The following discussions are keyed to the like-numbered proposals contained in Notice 78-11.

Proposals 9-1 and 9-2. These proposals would allow applicants for a flight engineer certificate, or for an additional class rating on an existing certificate, to complete the flight

portion of the practical test and to gain operational experience in an approved simulator for the type of aircraft on which the applicant would serve. The comments received reflected many inconsistencies in these proposals, such as: (1) whether the Flight Engineer Certificate would be issued after the practical test or after completion of the operating experience; (2) that there were no guidelines established for an approved simulator under Part 63; (3) that there were no qualifications specified for the position of a "check flight engineer"; and (4) that § 121.434 requires initial operating experience to be obtained on an airplane and has not been amended to allow such experience to be gained in a simulator. Therefore, § 121.434 is compatible with § 63.40. Correction of these inconsistencies would result in what is, in effect, a new rule upon which the public has not had the opportunity to comment. These proposals are withdrawn for further study.

Proposal 9-3. This proposal would exempt an applicant for a flight engineer certificate, employed by a Part 121 certificate holder, from the 10-hour flight training requirement in Appendix C of Part 63 if that applicant successfully completes an approved training program and is recommended by an instructor.

Paragraph (a)(3)(iv)(b) of Appendix C of Part 63 already allows an applicant, who holds at least a commercial pilot certificate with an instrument rating, to substitute training received in either a training device or simulator for up to all the required 10 hours of airplane time. A Part 121 certificate holder can take advantage of the reduced flight time provisions by applying for such a course under the provisions of § 63.43. The FAA considers the requirements of Appendix C of Part 63 to be the minimum training required for a flight engineer certificate.

After comprehensive review of the proposal and all comments, and recognition of the relative ease by which a Part 121 certificate holder can obtain a Part 63 flight engineer training course and the FAA policy to simplify and streamline regulations, further relief is unnecessary and the proposal is withdrawn.

Proposal 9-4. All comments favor the deletion of § 65.15a, which allows the reissuance of certificates without expiration dates to persons who are not U.S. citizens, and it is deleted and reversed.

Proposal 9-5. All commenters favor the change to § 65.81, "General privileges and limitations," which adds the words "preventive maintenance" to this section to make it consistent with § 43.3 which authorizes persons to perform maintenance, preventive maintenance, rebuilding and alterations, and it is adopted without substantive change. This extends the present privileges and limitations for maintenance, rebuilding, and alterations to preventive maintenance and § 65.81 is adopted without substantive change.

Proposal 9-6. A majority of commenters favor adoption of § 65.93 which provides additional qualifying activities for renewal of inspection authorization (IA) including recurrent training. Several commenters recommend that performance of inspections under § 91.217 be included as an additional qualifying activity for IA renewal. A certificated mechanic may perform inspections under § 91.217, but they are not inspections that must be performed only by a person holding an IA. The eligibility for renewal of an IA should not be determined on the basis of § 91.217 inspections but should be based on those inspections which only an IA may do.

One commenter suggests that the person holding an IA should present a list of the aircraft that person inspected during the previous year as evidence of that person's activity. Section 65.93 does not require a list. This requirement would impose additional and unnecessary recording requirements on the IA applicant.

Accordingly, § 65.93 is adopted without substantive change.

Proposal 9-7. All commenters favor § 65.103 which: (1) extends to certificated repairmen the privileges of performing preventive maintenance or alterations already authorized under § 43.3(a); (2) replaces the phrase "maintenance manual" in § 65.103(b) with the phrase "instructions for continued airworthiness" for consistency with the concept of continued airworthiness used throughout the FAR (Parts 43, 121, 127 and 135) and because instructions may exist in documents other than maintenance manuals; and (3)

replaces the phrase "repair station, commercial operator, or air carrier" with the phrase "certificate holder" since all of the listed organizations are certificated holders. Section 65.103 is adopted without substantive change.

Proposals 9-8 and 9-9. Sections 121.97 and 121.117 would require the certificate holders to establish and maintain an approved system to obtain, disseminate and use, on a continuous basis, current aeronautical data for each airport the holders serve. One commenter objects to requiring airport data stating it is unnecessary, unrealistic, should be withdrawn, and that many of the requirements are not clearly stated. Another commenter states that the sections duplicate information now provided for FAA airport certification. A third commenter states that the requirement for an approved system involves the decision of a principal operations inspector, who has little or no guidance on which to base the approval.

The FAA has determined that expansion of the present rules to describe the airport data and provide an approved system for its collection and dissemination is necessary. Present rules do not adequately describe the airport data which the air carrier must have available. In addition, National Transportation Safety Board (NTSB) Report 72-17 (Pan American World Airways Boeing 747 San Francisco, CA; July 30, 1971) states that "irregularities involving the collection and dissemination of airport information" cause the air carrier operational control systems to be ineffective.

No comments were received on the proposed 1-year compliance date. Under the requirements of §§ 121.97 and 121.117, each certificate holder must have an approved system for obtaining, maintaining, and distributing the current aeronautical data specified in §§ 121.97(b) and 121.117(b). The FAA estimates that, depending on the size and complexity of each certificate holder's operation, it will take approximately 6 months to gather the required information and another 6 months to design, establish, and gain approval of such a comprehensive system. Accordingly, §§ 121.97 and 121.117 take effect 1 year after the effective date of these amendments. Although these sections may duplicate some information required for airport certification under Part 139, a comprehensive system ensures that the air carrier has adequate airport and other data available for safe operation. To provide guidance for the principal operations inspectors and the public in obtaining approval of this system, an advisory circular will be issued. After considering the comments, §§ 121.97 and 121.117 are adopted without substantive change.

Proposal 9-10. This proposal would require all Part 121 certificate holders to provide guidance in their operations manuals to enable their flight and ground operations personnel to recognize and handle packages containing hazardous materials. One commenter objects to § 121.135(b)(23) stating it is unnecessary, unrealistic, and should be withdrawn. The commenter argues that training programs now exist for air carriers that carry hazardous material and to require training for those operators not engaged in the carriage of that cargo is a waste of time. The rule requires that Part 121 certificate holders who do not carry hazardous materials have procedures and instructions of sufficient detail to ensure that their employees can recognize shipments of these materials and refuse to accept them. This reduces the possibility of the carrier inadvertently carrying them. No comments were received on the proposed 90-day compliance date. Ninety days allow adequate time for the operator to include these procedures and instructions in their operations manuals. Accordingly, § 121.135(b)(3) is adopted without substantive change.

Proposal 9-11. All commenters support § 121.137. This proposal requires each person to whom a manual or appropriate parts of it are furnished, to have it accessible when performing assigned duties. One commenter wants the words "each person" changed to "each crewmember" and wants to require the crewmember to carry or have the manual or appropriate parts available for other persons to use. The manual contains company procedures and guidance for both crewmembers and ground personnel. The rule does not restrict its use to crewmembers. The manual must be accessible to every person when performing assigned duties. Accordingly, § 121.137 is adopted without substantive change.

Proposal 9-12. All comments support § 121.161(a) to require certificate holders to comply with the same route and airport restrictions for passenger and cargo operations. Section 121.161(a) is adopted without substantive change.

Proposal 9-13. All comments support § 121.163 that allows a reduction of proving tests if a satisfactory level of proficiency is demonstrated. Section 121.163 is adopted without substantive change.

Amendment to § 91.33

Amendment No. 91-154 (43 FR 46230; October 5, 1978) amended § 91.33 to require that after December 4, 1980, each safety belt in an aircraft must be equipped with an approved metal to metal latching device. As discussed in the preamble to that amendment, the FAA intended to allow 3 years to install the metal to metal latching devices. However, the compliance period was inadvertently set at 2 years. This amendment corrects the discrepancy by setting a 3-year compliance period. Since this amendment is relaxatory and clarifying in nature and does not impose a burden on the public, I find that notice and public procedure are unnecessary and that good cause exists for adopting this amendment.

Amendment to § 121.220

Amendment No. 121-154 (45 FR 3880; January 21, 1980) incorrectly designated the cabin zone concentration requirements as § 121.220, placing them in Subpart J, Special Airworthiness Requirements. The proper location for this requirement is in Subpart T, Flight Operations, since it is an operational requirement. Accordingly, § 121.220 is redesignated as § 121.578.

Adoption of the Amendments

Accordingly, Parts 65, 91, and 121 of the Federal Aviation Regulations (14 CFR Parts 65, 91, and 121) are amended effective September 9, 1980.

(Secs. 313, 314, and 601 through 610, Federal Aviation Act of 1958 (49 U.S.C. 1354, 1355, and 1421 through 1430) and section 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

NOTE—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to the person and address listed under "For Futher Information Contact."

Amendment 65-27

Miscellaneous Amendments

Adopted: February 26, 1982 **Effective: April 28, 1982**

(Published in 47 FR 13312, March 29, 1982)

SUMMARY: These amendments make a number of minor changes to the Federal Aviation Regulations (FAR). They amend certain Parts to change prerequisites required for flight tests and the experience necessary for an airline transport pilot certificate. They change the validity period for the written test for a flight engineer certificate. In addition, they amend certain sections of the FAR by changing the word aircraft to airplane. Part 45 of the FAR is amended to permit an approved parts manufacturer to refer, on a tag, to readily available information when it would be impractical to mark the required eligibility information on the tag. Part 91 of the FAR is amended to delete the list of purposes for which a special flight authorization for foreign civil aircraft may be issued. Other sections are amended for purposes of clarification or correction.

FOR FURTHER INFORMATION CONTACT: Mr. E. Wendell Owens Regulatory Review Branch (AVS-22), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone (202) 755-8714.

SUPPLEMENTARY INFORMATION:

Background

A number of these amendments address problems in the FAR which have been highlighted by numerous requests for exemptions and extensions of compliance dates. In addition, several areas in the FAR require interpretation and clarification. The remaining changes are editorial.

Generally, these amendments address unrelated items that have accumulated over recent years and are appropriate for consolidation in a miscellaneous amendment package.

Discussion of Comments

The following discussions are keyed to like-numbered proposals contained in Notice 80-23 (45 FR 80450; December 4, 1980).

Proposal 1. The proposal to amend § 21.197 to make Part 135 operators eligible for special flight permits with continuing authorizations was disposed of separately in Amendment 21-54 (46 FR 37876; July 23, 1981).

Proposal 2. This proposal would correct an incomplete listing of sections. The correct sections are listed in Appendix A, Section A23.1(a), as §§ 23.321 through 23.459. No comments were received on this proposal. Accordingly, the proposal is adopted without substantive change.

Proposals 3 and 9. Sections 23.305(a) and 25.305(a) contain parallel requirements for structural strength and deformation; however, these include differences in wording and punctuation from the corresponding statements contained in the similar, but correctly stated §§ 27.305(a) and 29.309(a). These proposals would correct §§ 23.305(a) and 25.305(a) by making them consistent with §§ 27.305(a) and 29.305(a). One commenter points out that the word "or" was erroneously inserted at the time CAR 6 and 7 were recodified to Parts 27 and 29 of the FAR. The commenter further states that §§ 23.305 and 25.305 are correctly stated, and that §§ 27.305(a) and 29.305(a) (which have the word "or" inserted) should be revised accordingly.

As originally written, the word "detrimental" was used to quantify the amount of permanent deformation and prohibit acceptance of a loading test which resulted in deforming the tested article to an extent that would degrade its structural charateristics. Insertion of a comma or a conjunction between "detrimental" and "premanent" would change the intended meaning. Inasmuch as the proposed change would only add to the error, the proposals to amend §§ 23.305 and 25.305 are withdrawn.

Proposal 4. This proposal would rearrange paragraphs (a)(1), (a)(2), and (a)(3) of § 23.441 to ensure that the correct tail load distribution is imposed for the flight condition. One commenter points out that the desired correct correlation between load specifying figures in Appendix B and the alternate load requirements of §§ 23.441(a), (b), and (c) could also be accomplished by leaving (a)(1), (a)(2), and (a)(3) in their present order while changing B6, B7, and B8 to B7, B6, and B8. Inasmuch as the interchange of the numbers 6 and 7 occurred initially when the prefix letter B was added in Amendment No. 23–7, August 13, 1969, and because other printings of Part 23 use the order B7, B6, and B8, the FAA disagrees with the commenter. Accordingly, the proposal is adopted without substantive change.

Proposal 5. This proposal would amend § 23.472(f) to delete reference to § 23.725 and insert the reference to § 23.723(a) in its place. This proposal would permit drop tests other than the free drop tests, and would make the requirement consistent with corresponding sections of Parts 25, 27, and 29. No comments were received on this proposal. Accordingly, the proposal is adopted without substantive change.

Proposal 6. No comments were received on the proposal to insert the word "red" before the word "arcs" in § 23.1549(d), for consistency with § 25.1549(d). The proposal is adopted without substantive change.

Proposal 7. This proposal would correct a reference to § 23.201(b) in § 23.1587(a)(1).

The reference to § 23.201(a) or (b) in § 23.1587(a)(1) is incorrect. Reference to § 23.201(a) as proposed in Notice 80–23 is also incorrect. Both references are for paragraphs dealing with control configurations. Section 23. 201(c) deals with a maneuver as intended in § 25.1587(a)(1).

Two commenters suggest that the altitude loss information required by § 23.1587(a)(1) should be required for all airplanes regardless of whether or not they have independent controls. The FAA agrees and has amended § 23.1587(a)(1) to reference § 23.201(c) which applies to all airplanes regardless of their control configuration. The section is amended accordingly.

Proposal 8. This proposal would correct errors contained in the equation constants noted under A23.3, Special Symbols.

No comments were received on the proposal to correct the numbers in the velocity equations which will then correctly reflect the change from miles per hour to knots. This proposal is adopted without substantive change.

Proposal 10. This proposal would amend § 25.807 to make it clear that all transport category aircraft must have ditching emergency exits whether or not ditching certification is requested.

One commenter objects to the application of the ditching (emergency exit) requirement to all Part 25 and Part 29 aircraft. The commenter states that the ditching provisions of §§ 25.807 and 29.807 do not apply unless requested. This commenter also directs attention to Notice 80–23 which solicits economic information on these regulations.

Another commenter expressed full support of the proposal. This proposal is intended to clarify the existing regulation and does not establish a new requirement for transport category airplanes. Accordingly, the proposal is adopted without substantive change.

Proposal 11. No comments were received concerning these proposed minor editorial changes. Accordingly, the proposal is adopted without substantive change.

Proposal 12. This proposal would amend § 29.807 to make it clear that all transport category aircraft must have ditching emergency exits whether or not ditching certification is requested.

A commenter states that helicopters not certified for ditching will probably capsize immediately when rotor lift is lost because of their high center of gravity and lack of lateral stabilizing appendages such as wings. This commenter also claims that, because of the additional factor that compartments are not usually water-tight, it is impossible to determine a waterline. The commenter recommends the proposal be cancelled.

Two commenters strongly object to this proposal on the basis that the extension of the transport airplane condition to a helicopter is illogical because of the unique characteristics of helicopters. The commenters point out that the FAA previously considered this question and agreed that the proposed requirement was inappropriate.

Since the time this question was previously considered, there has been no new evidence which would justify a change in rationale, nor has there been any new evidence pointing to a need for added rotorcraft ditching exit provisions. Accordingly, this proposal is withdrawn.

Proposal 13. This proposal would have made Part 43 internally consistent by amending § 43.4 to include Canadian persons authorized under § 43.17. Operations Review Program Notice No. 12 proposes changes to § 43.3. Accordingly, this proposal is withdrawn and will be acted upon as part of that review. Comments received in response to this proposal will be given full consideration in that action.

Proposal 14. Two comments were received in response to this proposal to revise the marking requirements of § 45.15 so that when it is impractical to mark the required eligibility information on the tag attached to a part or container, the tag may refer to a specific and readily available reference manual or catalog which contains the required information.

One comment was submitted by the Industry Association that petitioned for this rule change. It found the wording of this proposal to be reasonable.

Another commenter believed that the original concept of Parts Manufacturer Approvals (PMA) was primarily based on the production of parts such as spark plugs, pistons, piston pins, etc., to be used as duplicate parts without a specific part number. These parts are, in fact, required to have a specific part number. Further, the PMA manufacturer is required to mark the parts (or tags) with parts replacement eligibility. It was not proposed to remove the requirement for this information from § 45.15; it was proposed to provide that, in those cases where it would not be practical to mark the required eligibility information on the tag, the tag may contain a reference to a readily available manual or catalog containing the required eligibility information.

Section 45.15 is adopted without substantive change.

Proposal 15. Section 61.39(b) has required that an applicant for an airline transport pilot certificate or an additional rating who does not wish to retake the required written examination must have been continuously employed since passing the written examination and be participating in a pilot training program. For the exception from the 24-month requirement to apply, a person had to have been employed by a carrier immediately (within 24 hours) after taking the written examination; a strike or furlough constituted a break in continuous employment, thus invalidating the exception. The FAA has determined that this rule is too restrictive, since it is possible for a pilot to be on vacation for a longer period of time than some strikes or furloughs last, and it would be unfair to apply the exception provision to the vacationing pilot but not the striking or furloughed pilot. Accordingly, Notice 80-23 proposed to amend § 61.39 to provide that the applicant need only be employed within the period ending 24 calendar months after the month in which the applicant passed the written examination and at the time of the flight test. Notice 80-23 also proposed to eliminate the continuous employment requirement and substitute a requirement to complete initial training and when appropriate, transition or upgrade training, and to meet the recurrent training requirements. Requiring an individual's training to be current is a better means of ensuring retention of the knowledge tested by the written test than requiring continuous employment.

One commenter responded in support of the proposal. The proposal is adopted as proposed.

Proposal 16. Section 61.155(d) has provided that a commercial pilot may credit toward the total flight time required for an airline transport pilot certificate any second-in-command time "in operations under Part 121." However, § 61.51(c)(3) provides that for meeting the requirements for a certificate or rating, a pilot may log as second-in-command time all flight time during which that pilot acts as second in command of an aircraft on which more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is conducted. The intent of § 61.51(c)(3), when it was

adopted, was that this rule should apply to the experience requirements for each kind of pilot certificate. However, at that time no change was made in § 61.155(d). Notice 80–23 proposed to eliminate the phrase "in operations under Part 121," so that all second-in-command time which meets the requirements of § 61.51(c)(3) may be credited under § 61.155. No comments were received on this proposal.

The proposal is adopted and all second-in-command time which meets the requirements of § 61.51(c)(3) may be credited under § 61.155(d).

Proposal 17. Section 63.35(d) has required continuous participation in a maintenance, flight engineer, or pilot training program of a Part 121 certificate holder for an applicant for a flight engineer certificate to be exempted from the 24-month validity period for the written examination. Similar to § 61.39, this section has been interpreted to mean that any break in employment, such as a strike or furlough, constitutes an interruption of continuous participation in a training program and prevents the exception from applying. The FAA has reevaluated this requirement and has determined that continuous participation in a training program is not essential. Currency in a certificate holder's training program for a flight crewmember or recency of experience for a mechanic employed by a certificate holder ensures knowledge retention better than continuous participation in a training program.

Notice 80–23 proposed to amend § 63.35(d) to apply the exception provision to a flight crewmember or mechanic who is employed by a certificate holder within the period ending 24 calendar months after the month in which the applicant passed the written examination, and whose training is current or meets the recent experience requirements for a mechanic under § 65.83. It also proposed to expand the rule to include employment by a commuter air carrier.

No comments were received on the proposal. It is adopted without substantive change.

Proposal 18. Notice 80–23 proposed to amend § 65.101 to allow formal training to be substituted for the practical experience now required for repairman certificate eligibility. One commenter agreed with the substance of the proposal, with the exception that completed formal training should have the prior approval of the Administrator instead of being reviewed for acceptability after completion.

Because of the diversity and uniqueness of training associated with repairman ratings, it would be impractical to establish national uniform training standards necessary for prior approval of training programs. Conversely, FAA certificated air agencies, aviation manufacturers, and air carriers are best able to establish that formal training which will qualify the repairmen they employ to perform or supervise the maintenance of aircraft or components at its facilities. The FAA can then review the training and determine if it is acceptable. This amendment will provide a logical alternative to the 18 months of practical experience formerly required for repairmen eligibility and still provide an equivalent level of competency. Accordingly, this proposal is adopted without substantive change.

Proposal 19. It was proposed to amend § 65.127(b) to provide that a parachute rigger need only have available suitable housing that is adequately heated, lighted, and ventilated for drying and airing parachutes. This section has required, in part, a compartment for hanging a parachute vertically for drying and airing. Since parachutes are now made of synthetic fabrics, a vertical or horizontal means for drying and airing parachutes is also acceptable. However, the housing must still be adequately heated, lighted, and ventilated.

No comments were received on this proposal. Section 65.127(b) is being revised as proposed.

Proposal 20. Notice 80–23 proposed to delete the list of purposes for which a special flight authorization could be issued. The intent was to eliminate the need for an applicant to petition for an exemption from previous § 91.28 when the purpose was other than that specified under the rule. This was intended to relieve the burden on both the FAA and the public imposed by exemption procedures.

Review of the comments received revealed that even though all commenters supported the proposal, they apparently misconstrued intent, in believing that CAB authority, in addition to the FAA special flight authorization, would be necessary for all purposes, including those which formerly did not require CAB authority under the previous rule. The CAB also submitted comments consistent with most commenters indicating that the proposed rule was subject to misinterpretation. The CAB provided revised language for proposed § 91.28(c) to preclude any misunderstanding as to when CAB authority would be necessary.

In this regard the FAA agrees with the commenters and the CAB that the proposal was not clear relative to when CAB authority would be necessary. Accordingly, the FAA has amended the language of proposed § 91.28 to clarify when CAB authority would be necessary.

One commenter noted that, in the case of special flight authorizations for air shows (§ 91.28(b)(6)), the application procedure contained in proposed § 91.28(a) would no longer provide for applications to be made to the Regional Director of the FAA region in which the air show will take place. The commenter stated that the existing application procedure should be retained since it is economical and effective. The FAA agrees with this comment and has amended § 91.28(a) to reinstate this application procedure.

One commenter stated that it was not clear whether the Regional Director would have authority to issue special flight authorizations for extended periods of time; i.e., once justification had been established for an initial special flight authorization, there would be no benefit in repeating the procedure for each subsequent trip, as in the case of a Canadian amateur-built aircraft to participate at United States air shows. This comment was not considered since it was determined to be outside the scope of Notice 80-23.

Accordingly, this section has been amended consistent with public comments in the interest of clarification and adopted without substantive change.

Proposal 21. This proposal would have required all helicopters operating under IFR to use altimeters which have been tested for the altitudes at which operations are conducted. Operations Review Program Notice No. 12 proposes a number of changes to § 91.170. Accordingly, this proposal is withdrawn and will be acted upon as part of that review. Comments received in response to this proposal will be given full consideration in that action.

Proposal 22. This proposal would delete references to Part 103 in § 121.135(b)(23) and insert appropriate references to Title 49 of the CFR. Since this change was previously accomplished in Operations Review Amendment No. 9 (45 FR 46736), this proposal is withdrawn.

Proposal 23: This proposal would require the interphone system to be accessible for use at enough flight attendant stations so that all floor-level emergency exist in each passenger compartment are observable from one or more of those stations so equipped. Section 121.319(a) requires, in part, that airplanes with a seating capacity of more than 19 passengers must be equipped with a crewmember interphone system. Section 121.319(b)(5)(i) requires that for large turbojet-powered airplanes, the interphone system must be accessible for use at enough flight attendant stations so that all floor-level emergency exits in each passenger compartment are observable from one or more of those stations. From a security and operational viewpoint, if the floor-level exit is located within a galley, and the entryway to the galley is observable, this will satisfy the operational/security requirements and, therefore, it would be unnecessary to view the exit itself. No comments were received on this proposal. Accordingly, it is adopted without substantive change.

Proposals 24, 25, 27, and 28. Sections 121.385, 121.389, 121.695, and 121.697 contained inconsistencies in the use of the words "aircraft" and "airplanes." The proposals would replace the word "aircraft" with the word "airplane" where it appears in §§ 121.385(a), 121.389(a)(2), 121.695(a), and 121.697(a) and (d). These editorial corrections

would make the language consistent with the applicable word definitions. No comments were received on these proposals. Accordingly, they are adopted without substantive change.

Proposal 26. This proposal would have amended § 121.585 to require a certificate holder to notify a passenger declaring a firearm in checked baggage of the definition of a "loaded" firearm. It further would have required a certificate holder to determine that ammunition is carried in accordance with the Hazardous Materials Regulations in Title 49 Parts 171, 172, and 173 of the CFR.

Inasmuch as there is no evidence indicating a need for this added provision, and its implementation would impose an additional unnecessary cost on certificate holders, this proposal is withdrawn.

Proposal 29. This proposal would relieve an unnecessary burden on certificate holders that do not have clerical staffs working holidays and weekends by revising § 121.703 to change the reporting time to 9:00 a.m. the second workday following the date of the reportable event for reports covering holidays and weekends. No comments were received on this proposal. Accordingly, this proposal is adopted without substantive change.

Proposal 30. Part 129 prescribes rules governing the operation within the United States of aircraft of foreign air carriers holding a permit issued by the Civil Aeronautics Board (CAB) under Section 402 of the Federal Aviation Act of 1958. Currently, the CAB issues exemptions to permit temporary operations by foreign air carriers without a Section 402 permit provided the foreign air carrier is in compliance with Part 129. This proposal would amend § 129.1 of the FAR to make Part 129 applicable to foreign air carriers who hold either a Section 402 permit or other appropriate economic authority, or an exemption issued by the CAB which requires compliance with that Part. No comments were received on this proposal.

The phrase "conditioned upon the foreign air carrier compling with the requirements of the Part" is ambiguous since Part 129 applies regardless of CAB conditions shown on the economic authority to operate in the United States. Accordingly, this section has been amended and adopted without substantive change.

Proposals 31 and 32. These proposals were disposed of in Amendments 135-13 (46 FR 28301; May 26, 1981) and 135-15 (46 FR 30968; June 11, 1981).

Editorial Corrections

Amendments to §§ 107.13(a) and 121.575 were not proposed in Notice 80-23. They are editorial corrections which are necessary and resulted from new Part 108, Airplane Operator Security (46 FR 3782; February 15, 1981).

These amendments correct §§ 107.13 and 121.575 by inserting the appropriate reference to the new Part. No substantive change is made as a result of the corrections.

ADOPTION OF THE AMENDMENT

Accordingly, Parts 23, 25, 45, 61, 63, 65, 91, 107, 121, and 129 of the Federal Aviation Regulations are amended effective April 28, 1982.

(Secs. 313(a), 601 through 605 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1425); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49)

NOTE: The FAA has determined that these amendments reduce the regulatory burden on the flying public by relaxing certain regulations that govern prerequisites for flight tests, approved parts reference for manufacturers, and special flight authorization for foreign civil aircraft by prescribing only the minimum regulations deemed necessary for safety. The FAA's evaluation of the changes to Parts 23, 25, 45, 61, 63, 65, 91, 107, 121, and 129 indicates that the benefits will exceed the costs, primarily because the complexity and volume of regulatory material have been reduced. Further, proposals contained in the notice which have potential for placing a regulatory burden on the public have been removed. Therefore: (1) it has been determined that this is not a major regulation under Executive Order 12291; and (2) I certify that, under the criteria of the Regulatory Flexibility Act, these amendments will not have a significant economic impact on a substantical number of small entities. In addition, the FAA has determined that these amendments are not significant under the Department of Transportation Regulatory Policies Procedures (44 FR 11034; February 26, 1979). The impact of this rulemaking is so minimal it does not require a final regulatory evaluation since most of the amendments are merely editorial corrections and clarifications and some have minimal relaxatory and beneficial economic impact.

Amendment 65-28

Fees for Certification of Foreign Airmen and Air Agencies

Adopted: July 21, 1982 **Effective: October 18, 1982**

(Published in 47 FR 35690, August 16, 1982)

SUMMARY: These amendments establish (1) a schedule of fees for issuing certain airman and repair station certificates to certain foreign nationals outside the United States; (2) a method for collecting those fees; and (3) a need requirement for original certification of those airmen (a need requirement has already been established for issuing certificates to foreign repair stations). These amendments are designed primarily to recover costs the FAA incurs in certificating foreign airmen and repair stations overseas. The amendment requires that certificates be issued overseas to foreign nationals only when needed to operate or assure the continued airworthiness of U.S.-registered civil aircraft. Finally, this amendment is in keeping with the intent of Congress.

FOR FURTHER INFORMATION CONTACT: Kathleen W. Gorman, Chief, International Analysis & Coordination Division, AIA-300, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone: (202) 426-3230

or

Leo Weston, Chief, General Aviation and Commercial Branch, AWS-340, Aircraft Maintenance Division, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone: (202) 426-3546

or

Arthur C. Jones, Chief, Certification Branch, AFO-840, General Aviation and Commercial Division, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone: (202) 426-8196

SUPPLEMENTARY INFORMATION:

I. Background

On July 17, 1981, the FAA issued Notice of Proposed Rulemaking No. 81-12 (46 FR 40529; August 10, 1982) proposing: 1) to establish fees for issuance of certain airman and repair station certificates to foreign nationals residing outside the United States; 2) a method of collecting those fees; 3) a need requirement for those airmen; and 4) a 2-year limitation on the validity of certificates issued to foreign nationals. All interested persons have been given an opportunity to participate in the making of the proposed regulations, and due consideration has been given to all matters presented.

A. *Statutory*

Title VI of the Federal Aviation Act of 1958, as amended (the Act), gives the Administrator authority to issue certificates for airmen, instructors, schools, and repair stations. Section 602(b) states that the Administrator may, at his discretion, prohibit or restrict the issuance of airmen certificates to aliens.

In addition, the Administrator is charged with establishing a fair and equitable system for recovering full costs expended for any service, such as issuing the certificates discussed in Notice 81-12, which provides a special benefit to an individual beyond those which accrue to the general public. Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a) states:

> It is the sense of the Congress that any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared or issued by any Federal Agency . . . to or for any person (including groups, associations, organizations, partnerships, corporations, or

businesses), except those engaged in the transaction of official business of the Government, shall be self-sustaining to the full extent possible. . . .

To give full effect to this sense of Congress, § 483a further provides:

The head of each Federal agency is authorized by regulation (which, in the case of agencies in the executive branch, shall be as uniform as practicable and subject to such policies as the President may prescribe) to prescribe therefor such fee, charge, or price, if any, as he shall determine, in case none exists, or redetermine, in case of any existing one, to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts. . .

The statute provides that the amounts collected shall be paid into the Treasury as miscellaneous receipts.

B. *OMB Guidance*

To aid in establishing fee schedules, the Office of Management and Budget (OMB) has prescribed in Circular No. A-25, "User Charges," the general guidelines to be used in developing an equitable and reasonable uniform system of charges for certain Government services and property.

The circular provides that "Where a service (or privilege) provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large, a charge should be imposed to recover the full cost to the Federal Government of rendering that service." Circular No. A-25 specifies:

A special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service:

(a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public (e.g., receiving a patent, crop insurance, or license to carry on a specific business); or

(b) Provides business stability or assures public confidence in the business activity of the beneficiary (i.e., certificates of necessity and convenience [sic: convenience and necessity] for airline routes, or safety inspections of craft); or

(c) Is performed at the request of the recipient and is above and beyond the services regularly received by other members of the same industry or group, or of the general public (e.g., receiving passport, visa, airman's certificate, or an inspection after regular duty hours).

C. *Previous Notices*

Consistent with the guidelines in Circular No. A-25, in recent years the FAA issued several notices of proposed rulemaking to establish a schedule of fees for various FAA activities (Notices 67-17, 67-18, and 78-6). The schedules were predicated, however, on the FAA's systemwide total cost of performing specific certification activities, and no attempt was made to distinguish the far greater costs incurred performing certification services overseas from costs incurred performing similar services in the United States. The proposed fee schedules were never implemented. Beginning in 1973, the Congress annually prohibited implementing fee schedules through language in the appropriations legislation for the Department of Transportation. In 1979, this prohibition was deleted from the appropriations legislation but included in Section 45 of the Airline Deregulation Act of 1978:

Notwithstanding any other provision of law, neither the Secretary of Transportation nor the Administrator of the Federal Aviation Administration shall collect any fee, charge, or price for any approval, test, authorization, certificate, permit, registration, conveyance, or rating relating to any aspect of aviation (1) which is in excess of the fee, charge, or price for such approval, test, authorization, certificate, permit, registration, conveyance, or rating which was in effect on January 1, 1973, or (2) which did not exist on January 1, 1973, until all such fees, charges, and prices are reviewed and approved by Congress.

Before 1970, a liberal policy prevailed within the FAA regarding acceptance of applications for airman and air agency certificates by foreign nationals residing outside the United States. During the 1970's, however, the continuous expansion in worldwide demand for FAA certification services, along with the adverse movement of currency exchange rates against the U.S. dollar, placed an undue burden on FAA budgetary and manpower resources.

Simultaneously, the appropriateness of this policy was called into question. The technical sophistication of many foreign civil aviation certification authorities has been strengthened by general economic growth and civil aviation technical assistance provided by the International Civil Aviation Organization (ICAO), the United States, and other nations. Overly free exportation of U.S. certificates could deter the development of competent, indigenous certification programs. The FAA wishes to avoid that result and to encourage foreign governments in developing aeronautical codes and administrative capabilities which would permit them to conduct their own certification functions.

For these reasons the Administrator began a practice of restricting recertification of foreign nationals, primarily through the requirement that the applicant show that such certification is required to operate or assure the continued airworthiness of U.S.-registered civil aircraft (need requirement). This need requirement was incorporated in regulations governing certification of foreign repair stations (14 CFR § 145.71). To further ensure consistent implementation of this practice, these amendments incorporate the need requirement in the Federal Aviation Regulations (14 CFR Parts 61, 63, 65 and 67) governing initial airman certification.

In 1980 Congress passed the International Air Transportation Competition Act of 1979, giving the Administrator authority to establish fee schedules for airman and repair station certificates issued outside the United States. Section 28 of that Act amends § 45 of the Airline Deregulation Act of 1978 to read as follows:

> Nothing in this section shall prohibit the Secretary of Transportation or the Administrator from collecting a fee, charge, or price for any test, authorization, certificate, permit, or rating, administered or issued outside the United States, relating to any airman or repair station.

Although § 28 provides discretionary authority to collect fees from any applicant residing outside the United States, this regulatory amendment establishes fees to be collected only from foreign nationals residing outside the United States.

II. Discussion of Amendments

In keeping with the authority granted under § 28 of the International Air Transportation Competition Act of 1979, these amendments establish a schedule of fair and equitable fees for airman and repair station certification activities performed for foreign nationals outside the United States. For purposes of these amendments, persons having resident alien status are treated the same as U.S. citizens and will not be charged for FAA certification should it occur outside the United States.

Fixed fees for airman certificates and hourly rates for assessing fees for repair station certificates are included in the regulations as a new Appendix to Part 187 entitled "Fee Schedule for Certification Services Performed Outside the United States on Behalf of Foreign Nationals Other Than Resident Aliens." (Fixed fees could not be derived for repair station certificates because the time involved varies widely.) All fees are derived from total certification costs and include direct and indirect labor costs, overhead costs, interest recovery, depreciation, and space rent costs, where appropriate. The fees therefore implement OMB Circular No. A-25 and will recover all airman and repair station certification costs incurred by the FAA in issuing original certificates to foreign nationals.

No fees will be charged for renewing airman certificates. A fee will continue to be charged for replacing stolen or lost certificates. In addition, fees will be assessed for reissuing repair station certificates since reissuing these certificates requires considerable

expenditure of FAA technical resources. However, because the technical resources expended in reissuing Inspection Authorization Certificates under § 65.91 have, upon further review, been determined to be minimal, the proposed fee for renewing these certificates is not adopted. In addition, a requirement has been added that checks tendered for fee payment must be drawn on a U.S. bank. This requirement has been added because Treasury depositaries have established minimum check amounts acceptable for deposit. Without this requirement a substantial number of checks submitted for fees would be uncollectible.

These amendments also formally establish a need requirement for issuing certificates to foreign applicants outside the United States; that is, the certificate must be needed for the operation or continued airworthiness of U.S.-registered aircraft. Foreign nationals who are resident aliens will not have to meet this requirement.

The FAA does not currently issue to foreign nationals overseas: (1) Any certificates for Pilot Schools (Part 141), Ground Instructors (Part 143), Aviation Maintenance Technical Schools (Part 147), or Parachute Lofts (Part 149), and (2) certificates issued under subparts of Part 65 for Aircraft Dispatchers (Subpart C), Repairmen (Subpart E), or Parachute Riggers (Subpart F). Consequently, those parts and subparts have not been amended to include the need requirement and other requirements included in these amendments. Subpart B of Part 65 similarly has not been amended although it is understood the current practice of issuing under this subpart a limited number of air traffic control tower operator certificates overseas to foreign nationals to operate civilian/military joint-use facilities in Europe will be continued under an appropriate agreement with the Department of Defense.

Notice 81-12 proposed a 2-year validity period for each certificate issued to a foreign national who is not a resident alien. In this regard, the FAA has determined that additional information concerning this issue is needed. Therefore the proposal concerning the 2-year validity period is not adopted at this time. The FAA may, however, initiate rulemaking in this area in the future. It should be noted that withdrawing this proposal does not alter the current renewal requirements for repair station, flight instructor, inspection authorization, certain flight engineer, and student pilot certificates.

III. Fee Collection

For airman certificates, the FAA will collect the fees at the time of application for a certificate or rating, after first ascertaining the applicant's eligibility. The Flight Standards Office (FSO) or designated examiner will determine whether the applicant meets the need requirement and other preliminary eligibility requirements, such as age and currency. If these requirements are met, the FSO will issue a receipt as evidence of payment and forward the applicable fee to the regional accounting office serving the area. Fees must be in the form of a check, money order, or draft payable in U.S. currency to the Federal Aviation Administration and drawn on a U.S. bank. No application will be acted upon until evidence of the payment has been presented. There will be no refund of any fee payment for any examination which the applicant fails to pass. However, if an applicant notifies the FAA at least one week before a scheduled examination that he wishes it cancelled, the FAA will refund the fee payment after deducting a minimal service charge to cover the cost of processing the application.

In the case of repair station certificates, applicants will submit as prepayment the costs required for 25 hours of technical activity and 7.5 hours of clerical activity for original certification or approval of a change of location or housing of facilities, or 10 hours of technical activity and 3 hours of clerical activity for an amendment or renewal of the certificate due to an added rating or change in ownership, at the hourly rates specified in the Appendix to Part 187. This prepayment will be processed in the same fashion as fees collected for airman certificates. If the time required in actual certification is less than 25 and 7.5 hours or 10 and 3 hours, the FAA will submit to the applicant a refund to cover the difference between prepayment and actual costs. Conversely, if the time required is greater, the applicant will be required to submit the additional funds. As in the case of airman certificates, applicants for repair station certificates must pay these fees, regardless of whether a certificate is awarded.

In Notice 81-12, the agency proposed to amend § 65.15a. That section had previously been revoked by another regulatory action and, therefore, the proposed amendment was inappropriate. Therefore, the proposal to amend § 65.15a is withdrawn.

IV. Analysis of Comments

The FAA received 39 comments in response to Notice 81-12, 29 of which originated from the same pilot school in Belgium. Most of these comments, particularly those originating from the Belgian pilot school, argue that the proposed 2-year renewal requirement would inhibit the safe expansion of aviation in many parts of the world by denying FAA airman certificates to many foreign nationals overseas who may not be able to demonstrate periodically that they are operating or assuring the continued airworthiness of U.S.-registered aircraft. These commenters further argue that, as a result, aviation safety would suffer, the world market for aviation products and services would decrease, and most important, the current orientation of many pilots toward U.S. products and services would be substantially reduced.

Regarding this latter effect, the commenters argue the proposed 2-year renewal requirement would decrease U.S. general aviation exports by reducing the number of pilots trained on U.S. equipment. As one commenter states, "Foreign pilots trained on U.S.-aircraft will develop U.S.-brand loyalty, which would reflect when purchasing aircraft in their native countries" (sic). Those foreign nationals holding FAA flight instructor certificates apparently feel that the inability of some foreign nationals to meet the continuing need requirement would cause them to seek training from foreign-certificated flight instructors who use foreign-manufactured equipment and related training aides instead of FAA-certificated instructors using U.S.-manufactured equipment and related training aides.

Other commenters disagree with the proposed renewal requirement as a safety surveillance measure as it applies to airman certificates issued under Parts 61 and 63. One commenter points out that the FAA's current biennial flight review and instrument competency checks fulfill the requirement for safety surveillance and that a proposed 24-month term for a new license would appear to be a duplication of the biennial flight review.

The FAA believes that although these comments have merit as they apply to certification under Part 61, similar surveillance does not exist for airmen certificated under Parts 63 and 65. This amendment would have ensured greater surveillance of operations involving U.S.-registered aircraft operating outside the United States. However, unless and until it is determined that foreign nationals should be required to demonstrate a need for certification on a periodic basis, the FAA does not believe it appropriate to institute the biennial renewal requirement. Therefore, the proposal is withdrawn at this time.

Other commenters point out that at many overseas locations served by U.S. air carriers there is no FAA-certificated repair station and that it is financially advantageous for U.S. air carriers to use resident foreign nationals who are FAA-certificated mechanics rather than incur the considerably higher costs of stationing FAA-certificated U.S. citizens at these locations. Finally, they indicate that many foreign nationals may find it difficult to pay the $400 fee for original airframe mechanic certification and be deterred from applying.

Current FAA-certificated mechanics will not be required to pay the fee for a mechanic certificate or the fee for an inspection authorization certificate. While the costs of initial certification of new applicants may have to be borne directly or indirectly by the U.S. employer, the potential cost on U.S. air carriers is minimal when compared to either their total overseas maintenance costs or the costs of stationing FAA-certificated U.S. citizens overseas. Furthermore, the need for cost recovery and fiscal responsibility in government far outweighs this impact.

The FAA also considered the possibility that U.S. citizens, such as those providing humanitarian or religious services in remote overseas locations, could be impacted

negatively if these proposed fees deter foreign nationals from applying for original FAA mechanic certificates. The FAA does not expect foreign nationals to be deterred from applying. The employment value of certification to the foreign mechanic far outweighs the cost of this fee, and the value of the services provided U.S. citizens far outweighs whatever small percentage of the certification cost is passed on to them. Moreover, many of these U.S. citizens are already required to register their aircraft with the Civil Aviation Authority in the country in which it is based and therefore would be unaffected by the rule.

V. Issuance of Medical Certificates

Notice 81-12 proposed an $8 fee for the initial issuance of FAA medical certificates. Internal FAA review has shown that administering this separate fee for medical certificates would create an excessive burden by requiring the FAA to monitor the fee collection activities of overseas designated aviation medical examiners (AME's). To avoid this problem, applicants for initial student pilot certificates issued by the FAA or by a Designated FAA Examiner will pay a single fee for airman certification which will include $8 to cover the costs of a medical certificate issued under Part 67. An $8 charge will also be included into the fee for an initial certificate issued under §§ 61.75, 61.77, 63.23, and 63.42 if the applicant presents such a medical certificate as evidence of meeting the medical standards for the foreign certificate upon which the application is based.

In keeping with the decision to remove any fee collection responsibility from AME's, overseas applications for student pilot certificates must now be made directly to an FAA Flight Standards Office or to a Designated FAA Examiner and cannot be made to an AME. The administrative procedures of § 61.85 governing applications for student pilot certificates therefore have been amended to cover only applications made within the United States.

The Amendment

Accordingly, Parts 61, 63, 65, 67, 145, and 187 of the Federal Aviation Regulations (14 CFR Parts 61, 63, 65, 67, 145, and 187) are amended, effective October 18, 1982.

(Secs. 313, 601, 602, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1421, and 1422); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Title V, Independent Offices Appropriations Act of 1952 (31 U.S.C. 483(a)); Sec. 28, International Air Transportation Competition Act of 1979 (49 U.S.C. 1159(b)).)

NOTE—Since compliance with these amendments will have only a minimal cost impact on the maintenance of U.S.-registered aircraft overseas and will not otherwise impose any cost or other economic burden on U.S. citizens, it has been determined that they are not major regulations under Executive Order 12291 and, for the same reason, it is certified that, under the criteria of the Regulatory Flexibility Act, they will not have a significant economic impact on a substantial number of small entities. The FAA has determined that this document involves regulations which are not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA has determined that the expected impact on U.S. citizens of the regulations is no minimal that they do not require an evaluation.

Amendment 65-29
Use of Alcohol or Drugs
Adopted: December 13, 1984 Effective: June 17, 1985

(Published in 50 FR 15376, April 17, 1985)

SUMMARY: These amendments establish rules governing the use of alcohol or drugs by any crewmember assigned to perform duty during the operation of an aircraft. In addition to maintaining current provisions regarding the use of alcohol or drugs before serving as a crewmember, it delineates the maximum allowable blood alcohol content level. Crewmembers also will be required to furnish the Administrator with the results of any test that is performed that may indicate the percentage of alcohol in the blood or the presence of drugs in the body when such tests have been taken within 4 hours after acting or attempting to act as a crewmember. Failure to furnish or authorize the release of the results of these tests will result in certificate action or other sanctions. These rules are based, in part, on a National Transportation Safety Board determination that alcohol is a cause or factor in about 40 aircraft accidents annually, almost all of which are fatal. These amendments are intended to facilitate enforcement of the present drug and alcohol regulations and to reduce aircraft accidents and incidents attributable to consumption of alcoholic beverages and the use of drugs. For this same purpose, the FAA is proposing elsewhere in this issue of the *Federal Register* to require crewmembers to submit to tests for alcohol given by law enforcement officers under certain circumstances.

FOR FURTHER INFORMATION CONTACT: Mike Sacrey or Roger Baker, Federal Aviation Administration, General Aviation & Commercial Division, Operations Branch (AFO-820), 800 Independence Avenue, SW., Washington, D.C. 20591; Phone: (202) 426-8194.

SUPPLEMENTARY INFORMATION:

Background

Rules relating to the use of drugs and the consumption of alcoholic beverages in connection with aircraft operations are set forth in § 91.11 of the Federal Aviation Regulations (FAR) (14 CFR 91.11). This section provides that no person may act as a crewmember of a civil aircraft (1) within 8 hours after the consumption of any alcoholic beverage, (2) while under the influence of alcohol, or (3) while using any drug that affects the faculties in any way contrary to safety. "Crewmember" is defined in FAR Part 1 as "a person assigned to perform duty in an aircraft during flight time." A pilot, flight engineer, flight navigator, or flight attendant is such a person.

The National Transportation Safety Board (NTSB) has recommended that the FAA add an implied consent clause to the FAR and specify an alcohol level at which a pilot would be considered to be under the influence. The General Accounting Office (GAO) made similar recommendations in a Report to Congress by the Comptroller General entitled "Stronger Federal Aviation Administration Requirements Needed to Identify and Reduce Alcohol Use Among Civilian Pilots" (CED-78-58; March 20, 1978).

The FAA is concerned about the serious hazard, during aircraft operations, resulting from impairment of the pilot's faculties due to alcohol. Even small amounts of alcohol affect judgment, coordination, performance, and reaction time. Vision, hearing, touch, information processing, memory, reasoning, and attention span also may be affected by alcohol consumption. Inflight testing of experienced professional aviators has shown that even 40 milligrams percent by weight of alcohol in the blood exerts detrimental effects on performance which are incompatible with flight safety (Report on "The Effects of Alcohol on Pilot Performance During Instrument Flight" by Aviation Medicine Research Laboratory, Ohio State University; FAA Report No. FAA-AM-72-4). Moreover, the effects of alcohol on performance are additive to the expected hypoxic effects with increased altitude.

The ability of a crewmember to function without impairment of performance is an essential element in the safety of flight and in the effectiveness of the air traffic system. Since alcohol can affect the ability of a crewmember to function properly and thus is detrimental to aviation safety, the FAA must make every reasonable effort to prevent those who are under the influence of alcohol from flying.

For a number of years the FAA has expended a substantial amount of time and funds trying to educate the flying public to this danger. As part of this effort, the agency worked closely with groups such as the Aircraft Owners and Pilots Association and the Air Line Pilots Association to establish effective educational programs. Although these programs have been beneficial, the problem still remains. There continues to be a significant number of accidents each year where alcohol is found to be a factor or cause. For example, in 1979, according to an NTSB study, U.S. general aviation aircraft were involved in 34 accidents where alcohol impairment was a cause/factor, 30 of which were fatal. This represents an 88 percent fatality rate for alcohol-related accidents as compared to a 17 percent fatality rate for all of general aviation. In addition, in recent Congressional testimony, the FAA stated that there were 155 reported accidents from 1980 through 1982 in which evidence of drug carriage was found. Therefore, the FAA must take additional steps to reduce the frequency of these accidents by strengthening the rules relating to the use of alcohol and drugs.

The FAA published Notice of Proposed Rulemaking (NPRM) No. 81-9 on July 27, 1981 (46 FR 38480), proposing regulations that were intended to deter persons from acting or attempting to act as a crewmember while under the influence of alcohol or drugs and to provide a basis for necessary enforcement action. Seventy-four comments were received as a result of the NPRM. These amendments reflect both FAA consideration of those comments and its continuing responsibility to uphold and encourage safety in air commerce.

Blood Alcohol Content

Currently § 91.11(a) (1) and (2) provides that no person may act as a crewmember of a civil aircraft within 8 hours after the consumption of any alcoholic beverage or while under the influence of alcohol. In response to the recommendations from the NTSB and the GAO, Notice 81-9 proposed a further amendment to that section to prohibit acting as a crewmember while having 40 milligrams percent or more by weight of alcohol in the blood.

Some commenters oppose the proposed 40 milligrams, recommending that a level of 100 milligrams percent by weight, as used in many state motor vehicle statutes, be used instead. A number of other commenters agree that the proposed level is appropriate in view of the high performance required of pilots and the additive effects of alcohol at higher altitudes.

The FAR currently requires strict separation between alcohol and flying. The consumption of any alcohol within 8 hours before acting as a crewmember is prohibited. The FAA is adding a new prohibited level of alcohol which can be used to take enforcement action against a crewmember even where witness statements alone are insufficient to establish violations of the 8-hour rule or the under-the-influence rule. The FAA proposed a value of 40 milligrams percent by weight based on the latest and most extensive study and research, at the time of the proposal, into the amount of impairment induced by specific levels of alcohol content within the blood. Inflight testing of experienced professional aviators showed that 40 milligrams percent by weight of alcohol in the blood produced detrimental effects on performance that were incompatible with flight safety. Based on the available evidence, the FAA proposed that 40 milligrams percent by weight of alcohol in the blood be incorporated into the regulations. It is important to note, however, that it is possible to be under the influence of alcohol, or to have 40 milligrams or more percent by weight of alcohol in the blood, or both, more than 8 hours after consuming an alcoholic beverage.

Some commenters question what the term "40 milligrams percent by weight of alcohol" means, suggesting that a more common term be used. That term means 40 milligrams of alcohol in a sample of 100 milliliters of blood. This is equivalent to .04 percent alcohol in the blood. States, in their motor vehicle statutes, normally use percent to describe blood alcohol levels. The FAA agrees that it is appropriate to use a term which is more commonly understood. The rule, as adopted, thus expresses the prohibited blood alcohol level as ".04 percent."

Several commenters note that it is possible to have a blood alcohol level higher than .04 percent more than 8 hours after consuming an alcoholic beverage. This is true and is one reason why the "under the influence" provision and the ".04 percent" provision are needed in § 91.11 in addition to the 8-hour rule.

Breath Test

Notice 81-9 proposed criteria for requiring a crewmember to submit to a chemical test of the breath for blood alcohol levels. Such a test would have corroborated other evidence, such as a person's appearance or conduct, and it was anticipated that it would have aided in enforcing the regulations. The test would have been conducted by a representative of the Administrator on reasonable grounds to believe that the crewmember had violated § 91.11.

After further consideration, it appears that it would be impractical to have representatives of the Administrator equipped and trained to conduct the tests. As a number of commenters state, due to staffing levels and the large geographic areas covered by district offices, FAA inspectors are rarely able to respond to a report of a crewmember who is suspected of violating § 91.11 quickly enough to make a breath test useful. Breath testers would not be used often enough by FAA inspectors to warrant the expense of the testers and initial and recurrent training of the inspectors. There appears to be no practical method of requiring suspected violators to submit to a chemical test of the breath conducted by a representative of the Administrator. For this reason, the proposals requiring submission to a chemical test of the breath when requested by the Administrator and the consequences of refusal to submit to such a test are withdrawn.

Many commenters note that state and local law enforcement officers are often the first officials on the scene of an incident. Many state or local law enforcement officers are authorized, trained, and equipped to conduct, or are authorized to direct others to conduct, a chemical test of the breath or other test to determine the presence of alcohol or drugs in the body. The Administrator is proposing, in a supplemental notice of proposed rulemaking (published elsewhere in this *Federal Register*), that crewmembers be required to submit to such a test under certain conditions when requested by a law enforcement officer. This amendment allows the Administrator to request the results of these tests, as well as medical tests, based on reasonable ground for believing that the person acted, or attempted to act, as a crewmember of a civil aircraft in violation of § 91.11. The Administrator's ability to elicit the results of these tests should act as a positive deterrent to those persons who might otherwise attempt to act as a crewmember while under the influence of alcohol or drugs.

Attempting to Act as a Crewmember

Notice 81-9 also proposed to prohibit attempting to act as a crewmember under any of the criteria specified in § 91.11(a). Several commenters oppose this proposal, arguing that it may be difficult to establish when a person is attempting to act as a crewmember. However, circumstances do exist under which a person may be found to have attempted to act as a crewmember, such as when a person enters an aircraft to assume his or her duties as a crewmember while demonstrating by manner or physical indications that he or she appears to be intoxicated or under the influence of drugs. In such a case, an FAA inspector will not have the dilemma of choosing between trying to dissuade a person from acting as a crewmember or waiting for that person to actually execute his or her duties as a crewmember before a violation can be established.

One commenter questions whether flight attendants should be subject to the provisions of § 91.11, stating that there appears to be no history of accidents caused by flight attendants acting in violation of this section. As crewmembers, flight attendants should not be under the influence of drugs or alcohol while on duty since it could affect passenger safety. For this reason, flight attendants have been included in § 91.11 since it was first proposed. Their inclusion in this final rule is consistent with the purpose of the regulation.

Alcohol and Drug Test Results

Notice 81-9 proposed to amend § 91.11 to require that on the Administrator's request, a crewmember must furnish to the Administrator the results of any medical tests taken that indicate the level of alcohol in the blood or the presence of drugs in the body. The request would be made in the course of an enforcement investigation and would be based on reasonable grounds for believing that the person may have acted or attempted to act as a crewmember of a civil aircraft in violation of § 91.11(a). For a person to be required to submit the results of such a medical test, the test must have been given within 4 hours after the person acted or attempted to act as a crewmember. Substantial penalties were also proposed in §§ 61.16 and 63.12(a) for refusal to furnish the requested medical test results.

One commenter states that the 4-hour time period in which the medical test would have to be given is too long and suggests that a person should only be required to produce the results of tests conducted within 1 hour after acting or attempting to act as a crewmember. However, scientifically valid results can be obtained in the 4-hour time period proposed. Further, the 1-hour limit suggested would substantially reduce the usefulness of the rule since it is anticipated that it often will be more than 1 hour between the act and the time the test is taken. This amendment should allow the Administrator to obtain more easily the results of hospital or medical tests performed on a crewmember following an accident or incident.

As discussed under the section entitled "Breath Test," these amendments also allow the Administrator to request the results of tests conducted in accordance with Federal, state, or local laws if there is reason to believe the person may have violated § 91.11. Therefore, § 91.11, as adopted, requires that a crewmember furnish or authorize the release of the results of tests taken under the circumstances described. It should be emphasized, however, that the rules as adopted here do not permit the Administrator to require a person to submit to tests to determine the presence of alcohol or drugs. Note that this amendment does not in any way affect the Administrator's authority to request information under § 67.31 regarding a person's qualification for a medical certificate.

Eligibility After Drug Conviction

Sections 61.15, 63.12, and 65.12 currently provide that no person who is convicted of violating any Federal or state statute relating to the growing, processing, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is eligible for any certificate or rating issued under Part 61, 63, or 65 for a period of 1 year after final conviction, and that such a conviction is grounds for suspension or revocation of any airman certificate (certificate action) issued under these parts. Notice 81-9 proposed amendments to these sections to provide that a conviction for the violation of a Federal or state statute relating to drugs would be grounds for disqualification or certificate action only when the violation involved the use of an aircraft. The proposal was an attempt to remove disqualification for those convictions that do not evidence a disposition towards the irresponsible exercise of airman privileges.

A number of commenters oppose these proposed amendments, stating that while an airman's violation of a drug statute may not have involved the use of an aircraft, it may still indicate a lack of the high standards of integrity, responsibility, and compliance attitude required of airmen. The FAA has reconsidered the proposal in the light of these

comments. As indicated by several commenters, violations of the drug laws as set forth in the rule may indicate that the applicant would not be compliance-minded regarding the many safety rules in aviation. The courts have supported this view. The United States Court of Appeals for the Ninth Circuit affirmed the revocation of the private pilot certificate held by a man who had been convicted of possessing marihuana for sale. The court held that there was a rational relationship between a conviction for possessing drugs for sale and the potential for unsafe use of an aircraft for drug smuggling in the future. *Walters v. McLucas*, 597 F.2d 1230 (9th Cir. 1979). In another case, the United States Court of Appeals for the District of Columbia Circuit affirmed the revocation of the private pilot certificate of a person who had been convicted of conspiring to import marihuana, even though an aircraft had not been used in illegal or unsafe operations. This court held that there is a rational connection between past drug trafficking and future unsafe aircraft operations. *Rahm v. NTSB*, No. 74-1959 (D.C. Cir. Oct. 1, 1975) (memorandum opinion). The FAA agrees; therefore, this proposal is withdrawn to allow the Administrator to maintain his regulatory authority to take certificate action, when appropriate, against airmen who have been convicted of violating drug laws, whether or not that violation involved the use of an aircraft. This rule is consistent with the President's efforts to combat the illegal use and transportation of drugs.

Sections 61.15(a), 63.12(a), and 65.12(a) also currently make a person ineligible for a new certificate or rating for 1 year after final conviction. These sections make it mandatory that the Administrator deny an application for a new certificate or rating for 1 year after the date of the conviction. However, the current rule provides for but does not require the suspension or revocation of an existing certificate; rather, the Administrator may refrain from such action as appropriate. To provide this same flexibility to applicants for a new certificate or rating, the notice proposed to provide that such a conviction is "grounds for" denial rather than to provide a conviction makes the airman ineligible for a certificate. The intent of the proposal is adopted. By stating such a conviction "is grounds for" denial, the Administrator may use discretion in determining eligibility for a certificate or rating.

There appears to be some confusion over the wording of §§ 61.15(a), 63.12(a), and 65.12(a) regarding the phrase "period of up to 1 year after the date of final conviction." It was not clear to some commenters whether the 1-year period referred to the time in which an application could be denied by the Administrator (that is, in the nature of a statute of limitations) or to the maximum duration of the sanction. The proposal was meant to provide that the denial could last for up to 1 year after the final conviction but not beyond that date. The rule, as adopted, is reorganized to clarify this intent.

As proposed in Notice 81-9, §§ 63.12(b) and 65.12(b) did not provide that the commission of an act prohibited by § 91.11(a) or § 91.12(a) is grounds for revocation or suspension of a certificate or rating issued under Part 63 or Part 65, respectively. These provisions are contained in the current rule and were not intended to be removed. Therefore, §§ 63.12(b) and 65.12(b), as adopted, incorporate these provisions.

Notice 81-9 proposed, in §§ 61.16(b) and 63.12(b), a "minimum 1-year" suspension or revocation of a certificate issued under Part 61 or Part 63, respectively, for violation of § 91.11(c) or (d). The "minimum 1-year" is removed because it is inconsistent with the need for flexibility in enforcing the rule, as previously discussed.

Note that on October 19, 1984, the Aviation Drug-Trafficking Control Act was passed (Pub. L. 98-499). This act, in general, requires the Administrator to revoke the certificates of airmen who have committed certain Federal or state drug felonies involving aircraft. In those cases in which the new Act applies, its provisions will be used. In other cases, the current rules, as amended in this final rule, will apply.

Refusal to Carry Intoxicated Persons

Section 91.11(b) presently provides that, except in an emergency, no pilot of a civil aircraft may allow a person who is obviously under the influence of intoxicating liquors or

drugs (except a medical patient under proper care) to be carried in that aircraft. Recognizing the difficulty of interpreting the word "obviously," Notice 81-9 proposed to clarify the rule by referring to a person who demonstrates by manner or physical indications that he or she is under the influence of intoxicating liquors or drugs.

Three commenters oppose the proposed changes in the wording of this regulation as it relates to alcohol. One commenter states that the proposed rule is too strict, since it indicates that a passenger who had only one or two drinks would not be permitted on board because that person would be "under the influence." This commenter suggests that the rule only prohibit boarding of passengers whom the pilot has reason to believe will be a danger, such as those who are violent or angry. Another commenter suggests that wording in § 121.575(c) of the FAR has been effective in its application to Part 121 air carriers and should be used in § 91.11(b). Section 121.575(c) states: "No certificate holder may allow any person to board any of its aircraft if that person appears to be intoxicated." The FAA agrees that the wording "appears to be intoxicated" is appropriate and is more likely to be correctly interpreted. The FAA has therefore added this phrase to the proposed rule and amended § 91.11(b) to provide that no pilot of a civil aircraft may allow any person who appears to be intoxicated, or who demonstrates by manner or physical indication that he or she is under the influence of drugs, to be carried aboard that aircraft.

Regulatory Evaluation

It is expected that these amendments will deter a person from acting or attempting to act as a crewmember while under the influence of alcohol or drugs and will prevent some accidents that might otherwise occur. The exact number, however, is impossible to calculate.

While there might be some minor costs incurred in obtaining the results of tests and submitting them to the Administrator, the economic benefits provided by increased deterrence are greater than the relatively small costs involved.

Conclusion

While a minor cost may be incurred by suspected violators if asked to furnish the results of tests, compliance with these amendments will not impose any other cost or economic burden on airmen. Accordingly, it has been determined that this is not a major regulation under Executive Order 12291. However, this rule is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since these amendments have a minor cost impact and apply to individuals rather than small entities, I certify that under the criteria of the Regulatory Flexibility Act, these amendments will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

ADOPTION OF THE AMENDMENT

Accordingly, Parts 61, 63, 65, and 91 of the Federal Aviation Regulations (14 CFR Parts 61, 63, 65, and 91) are amended effective June 17, 1985.

(Secs. 313(a), 601, 602, and 609 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1422, and 1429), and 49 U.S.C. 106(g) (Revised, Pub. L. 97-449; January 12, 1983))

Amendment 65-30

Issuance and Renewal of Inspection Authorization

Adopted: April 1, 1985 **Effective: April 19, 1985**

(Published in 50 FR 15698, April 19, 1985)

SUMMARY: This amendment permits persons who have had their mechanic certificates or ratings suspended to be eligible for issuance or renewal of inspection authorizations (IA's) if their mechanic certificates or ratings have been reinstated. This amendment will remove a requirement that is unnecessary as a means of ensuring that only responsible persons exercise IA privileges.

FOR FURTHER INFORMATION CONTACT: Leo Weston, General Aviation and Commercial Branch, AWS-340, Aircraft Maintenance Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone: (202) 426-8205.

SUPPLEMENTARY INFORMATION:

Background

Section 65.93 of the Federal Aviation Regulations (FAR) provides that to be eligible for the renewal of an IA an applicant must present evidence that, among other things, he or she still meets the requirements of § 65.91(c) (1) through (4) for the original issuance of an IA. Before Amendment 65-22 (42 FR 46278; September 15, 1977), § 65.91(c) (1) provided that to be eligible for an IA, an applicant had to be "a certificated mechanic who has held both an airframe and a powerplant rating for at least 3 years before the date he applies." Amendment 65-22 revised paragraph (c) (1) to require that the applicant hold "a currently effective mechanic certificate with both an airframe rating and a powerplant rating, each of which is currently effective *and has been continuously in effect* for not less than the 3-year period immediately before the date of application." (Emphasis added.)

When renewal was sought under the old rule, the holder of an IA whose mechanic certificate or rating was suspended could still be said to have "held" that certificate during the time of suspension. However, the certificate could not be said to be "in effect" while it was suspended. Accordingly, after Amendment 65-22, the IA could not be renewed at the end of the year because at renewal time (authorization expires on March 31) the mechanic certificate or rating would not have been continuously in effect during the preceding 3 years. Therefore, the mechanic would not be eligible again for an IA until 3 years after the end of the suspension of the mechanic certificate. Moreover, because the eligibility requirements for issuance of a certificate are considered to be continuing requirements which must be met as long as a certificate is held, an IA does not "become effective" again under § 65.91 at the end of the suspension of the mechanic certificate.

At the time Amendment 65-22 was adopted, the FAA was aware that adding the words "continuously in effect" to § 65.91(c) (1) would have this result. It was considered appropriate because the privileges and responsibilities that a person is charged with while holding the IA are greater than those of a certificated mechanic. Under § 65.95, the holder of an IA may inspect and approve for return to service certain aircraft or related parts or appliances after a major repair or major alteration to it in accordance with Part 43 of the FAR and perform annual and progressive inspections. Although a mechanic is authorized to perform much of the associated maintenance work underlying these functions, the IA holder is ultimately responsible for ensuring that the work is done in accordance with the FAR.

This 3-year-long period of ineligibility, however, has had an unintended inhibiting effect on the FAA's enforcement program. Amendment 65-22 has had a significant impact on the action taken against a mechanic for relatively minor to moderate violations. As a result of Amendment 65-22, a short-term suspension of a certificate or rating for a relatively minor offense effectively revokes an IA for a period of 3 years. Further, this

creates the unusual situation where an action for revocation of an IA could have less of an impact on the mechanic involved than a 5-day suspension of a single rating on his or her mechanic certificate. (In most cases, a mechanic whose IA has been revoked may reapply after 1 year.) Not every action that warrants the suspension of a mechanic certificate evidences a lack of responsibility sufficient to justify such a long-term ineligibility for an IA. As a result, enforcement personnel have been reluctant in some cases to produce such results.

In attempting to resolve this problem, the FAA has reviewed the requirement of § 65.91(c) (1) and has determined that it is unnecessary as a means of ensuring that only responsible persons continue to exercise IA privileges. First, the suspension or revocation of a mechanic certificate or rating does result in loss of IA privileges. Section 65.92(a) provides that the holder of an IA may exercise the privileges of that authorization only while he or she holds a currently effective mechanic certificate with both a currently effective airframe rating and a currently effective powerplant rating. In addition, the cause that gave rise to suspension of the IA holder's mechanic certificate or rating may also warrant suspension of an IA for a longer period of time and may even justify revocation of the IA. Revocation of the IA may be justified when the person's actions evidence a lack of responsibility indicating that the mechanic should not be allowed to exercise the inspection and other privileges prescribed by § 65.95. Also, Section 609 of the Federal Aviation Act of 1958, as amended (FAAct), provides that the FAA may reexamine any civil airman, including the holder of an IA. The FAA may reexamine, for instance, when there is reason to believe that the holder of an IA may not be qualified to exercise his or her privileges. If, as a result of this reexamination, the FAA determines that safety in air commerce or air transportation and the public interest require, the FAA may issue an order suspending or revoking the IA. Thus, the cause that gave rise to the suspension of the IA holder's mechanic certificate may also warrant reexamination to determine his or her qualification to hold an IA. The results of this reexamination may warrant suspending or revoking the IA.

DISCUSSION OF THE COMMENTS

Interested persons were afforded the opportunity to participate in the making of this amendment by Notice 84-16 (49 FR 35652; September 11, 1984). Due consideration has been given to all comments presented in response to this Notice.

Sixteen of the 19 public comments received are favorable. Many of these favorable commenters agree that the proposal would reduce an unfair penalty imposed on any IA holder who has had his or her mechanic certificate or rating temporarily suspended by removing the requirement that the certificate and ratings be continuously in effect for 3 years at the time of the IA renewal.

Three commenters who are not in favor of this notice state that any time a certificated mechanic holding an IA has violated the regulations to such an extent as to cause a suspension of the mechanic certificate, that suspension should also affect his or her IA privileges. Two of these commenters state that a mechanic having his or her certificate or a rating suspended should have to prove his or her competency again to the satisfaction of the Administrator.

The FAA agrees, in part, with the above commenters that there are enforcement cases where suspensions or revocations of IA's or reexaminations of IA holders may be necessary. Under the authority of Section 609 of the FAAct, the FAA may reexamine an airman, including the IA. Therefore, when there is a question of an IA holder's qualification to exercise the privileges of the authorization, the FAA may reexamine the airman. Based on this reexamination or any other investigation, the FAA may suspend or revoke the airman's IA. The FAA has determined that its continued ability to suspend or revoke an IA or to reexamine an IA holder, when circumstances warrant, provides adequate protection against unqualified persons exercising IA privileges, without imposing an undue burden on mechanics for minor violations.

One commenter states that this NPRM is a timely response by the FAA to an unintended result of the rulemaking process and that it will relieve a significant burden to both individual certificate holders and the Administrator's enforcement personnel without derogation in air safety.

A professional organization states that the present regulations pose an unnecessary secondary penalty on any holder of an IA who is punished for a slight infraction of the regulations by suspension of either or both of the airframe and powerplant ratings. The organization believes that the public interest will not be compromised and that the economic impact will be positive because a highly trained individual will be returned to the wage-earning rolls more quickly.

Accordingly, the FAA is amending § 65.91 to return to the requirements which existed prior to Amendment 65-22 and is clarifying these requirements to provide that an otherwise eligible applicant need only hold a currently effective mechanic certificate with both an airframe rating and a powerplant rating which have been in effect for a total of at least 3 years. This revision will remove any inequity associated with the renewal process and will provide more flexible and fair enforcement program for IA holders, without derogation of the original certification standards.

REGULATORY ASSESSMENT

This rule will relax an unnecessary requirement for original issuance or renewal of an IA. It also will eliminate a double penalty currently imposed on any IA holder who, as a result of a suspension, becomes ineligible for renewal solely because his or her mechanic certificate or ratings were not continuously in effect during the 3-year period preceding the annual IA renewal.

This rule will not impose any costs, other than the cost of publishing the rule. Benefits of the proposed rule will accrue from the elimination of income loss due to an individual's not being permitted to renew an IA for 3 years from the date of a suspension. The actual benefits will be inconsequential because, once the full impact of the current rule was fully realized, the FAA imposed few suspensions on IA holders. Thus, very few IA holders actually will be affected by this rule. Comments to the NPRM did not disclose any data or facts to contradict this position. In light of the lack of costs and benefits, the FAA finds that a regulatory evaluation is not warranted.

Trade Impact Assessment

This rule will have no impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress in order to ensure, among other things, that small entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

This amendment will relax requirements for issuance and renewal of an IA and will impose no additional burden. Further, the number of persons who would be unable to renew their IA's if the current rule is not changed is minimal compared with the total number of IA holders.

The FAA finds that this rule will not have a significant economic impact, either beneficial or detrimental, on a substantial number of small entities. Therefore, a regulatory flexibility determination is not required.

NEED FOR IMMEDIATE ADOPTION

This amendment will provide immediate relief and reduce a regulatory burden on persons who have had their mechanic certificates or ratings suspended by permitting them to be eligible for issuance or renewal of their IA's provided their mechanic certificate or ratings have been reinstated.

Immediate adoption will permit persons who have had their mechanic certificates or ratings suspended since the last IA renewal date (March 31) to be eligible again on the following year's renewal date provided they meet all of the requirements of §§ 65.91, 65.92, and 65.93 of the FAR.

This amendment will also permit persons who had previously become ineligible for a 3-year period, because of suspension of their mechanic certificates or ratings, to immediately become eligible for issuance of IA's provided that their mechanic certificates or ratings have been reinstated and they meet the requirements of § 65.91 of the FAR.

Finally, adoption of this amendment will not impose any burden on persons affected. Therefore, for these reasons, I find that good cause exists for making this amendment effective in fewer than 30 days.

Conclusion

This amendment will relax the requirements for initial issuance and renewal of an inspection authorization and this will not impose an additional burden on any person. Accordingly, it has been determined that this action is not a major rule under Executive Order 12291, and it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For these reasons and because the number of persons who would be unable to renew their IA's if the current rule is not changed is minimal in comparison to the total number of IA holders, I certify that under the criteria of the Regulatory Flexibility Act, this proposal will not have a significant economic impact, positive or negative, on a substantial number of small entities. In addition, the FAA has determined that the expected economic impact of this proposal is so minimal that a full regulatory evaluation is not required.

ADOPTION OF THE AMENDMENT

Accordingly, § 65.91 of the Federal Aviation Regulations (14 CFR 65.91) is amended effective April 19, 1985.

(Secs. 313(a), 314(a), 601, 602, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1355(a), 1421, 1422, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

Amendment 65-31
Air Traffic Control Tower Operators: Medical Standards
Adopted: May 1, 1987 **Effective: June 8, 1987**

(Published in 52 FR 17518, May 8, 1987)

SUMMARY: This regulation excepts air traffic control tower operators who are employed by, or on active duty with, the Department of the Air Force, Army, and Navy and the Coast Guard from the requirement that they hold a second-class airman medical certificatie. This amendment is necessary to avoid the application of two different programs for physical qualification to Department of Defense and Coast Guard air traffic controllers.

FOR FURTHER INFORMATION CONTACT: Jon L. Jordan, M.D., Acting Federal Air Surgeon (AAM-1), Office of Aviation Medicine, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, telephone (202) 267-3537.

SUPPLEMENTARY INFORMATION:

Background

Section 65.31 of the Federal Aviation Regulations (FAR) now provides, in part, that except for a person employed by the FAA, no person may act as an air traffic control tower operator in connection with civil aircraft unless that person holds at least a second-class medical certificate issued under Part 67 of the FAR. In addition, § 65.33 of the regulations provides that to be eligible for an air traffic control tower operator certificate, except for a person employed by the FAA, a person must hold at least a second-class medical certificate.

Active duty military and Coast Guard air traffic control tower operators, as well as civilians employed as control tower operators by those services, frequently perform duties involving the control of civil aircraft. These controllers, therefore, must now medically qualify under the requirements of Part 67 of the FAR.

In addition to the qualification requirements of the FAR, military and Coast Guard air traffic controllers must qualify in accordance with separate standards set forth in the regulations of the employing service. For the qualification of air traffic controllers, these standards are equivalent to or exceed those contained in Part 67 of the FAR. The FAA has found that a person meeting them is physically able to perform the airman duties of an air traffic control tower operator. Medical examinations of air traffic controllers employed by the military and the Coast Guard are conducted under the direction of physicians who are fully knowledgeable of the medical requirements for performing air traffic control duties.

To avoid the application of two different programs for physical qualification of military and Coast Guard air traffic controllers, this amendment revised §§ 65.31, 65.33 and 65.49. Section 65.49 is also amended with respect to FAA air traffic controllers to make this section consistent with previously amended §§ 65.31 and 65.33. This amendment excepts air traffic controllers employed by, or on active duty with, the Air Force, Army, Navy, and Coast Guard from the requirement to hold a second-class medical certificate to be eligible for and to exercise the privileges of an air traffic control tower operator certificate.

Under this amendment, Part 65 still requires that air traffic control tower operators who are not employed by the FAA or employed by, or on active duty with, the Air Force, Army, Navy, or Coast Guard must hold second-class medical certificates.

GOOD CAUSE JUSTIFICATION FOR MAKING THIS AMENDMENT EFFECTIVE WITHOUT PRIOR PUBLIC COMMENT

Since air traffic control tower operators employed by, or on active duty with, the military and the Coast Guard must now meet medical standards imposed by the employing service that are equivalent to those required by Part 67, notice and public procedure are unnecessary and would not reasonably be expected to result in the receipt of beneficial information. However, interested persons are invited to submit such comments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator,

and this amendment may be changed in response to comments received. All comments received will be available in the rules docket for examination by interested persons before and after the closing date for comments.

CONCLUSION

The adoption of this rule rescinds the requirement that air traffic control tower operators employed by, or on active duty with, the military and the Coast Guard meet Part 67 medical standards. This amendment relieves a regulatory burden with minor cost savings to certificate holders. Therefore, the FAA has determined that this amendment is not a major rule under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, since no small entitles would be affected by this amendment, it is certified that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities. Because this amendment imposes no costs on affected individuals, the FAA has determined that the expected impact is so minimal that it does not warrent a full evaluation.

ADOPTION OF THE AMENDMENT

Accordingly, Part 65 of the Federal Aviation Regulations (14 CFR Part 65) is amended effective June 8, 1987.

The authority citation for Part 65 is revised to read as set forth below, and the authority citations following all the sections in Part 65 are removed:

AUTHORITY: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983).

Amendment 65-32

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

Adopted: November 14, 1988 Effective: December 21, 1988

(Published in 53 FR 47024, November 21, 1988)

SUMMARY: This final rule sets forth regulations to require domestic and supplemental air carriers, commercial operators of large aircraft, air taxi and commuter operators, certain commercial operators, certain contractors to these operators, and air traffic control facilities not operated by the FAA or the U.S. military to have an anti-drug program for employees who perform sensitive safety- or security-related functions. A special provision has been added to the rule that provides that the final rule does not apply to any person where compliance with the final rule would violate the domestic law or policy of another country. Testing under the rule will be conducted by an employer prior to employment, periodically, randomly, after an accident, based on reasonable cause, and after an employee returns to duty to perform a sensitive safety- or security-related function for an employer. The final rule also will require that an employer provide EAP education and training services to employees and supervisors. The rule is necessary to prohibit an employee from performing a sensitive safety- or security-related function for an employer while that employee has a prohibited drug in his or her system or if that employee has used drugs as evidenced by a drug test showing the presence of drugs or drug metabolites. The rule is intended to ensure a drug-free aviation workforce and to eliminate drug use and abuse in commercial aviation.

FOR FURTHER INFORMATION CONTACT: Dr. Robert S. Bartanowicz, Acting Deputy Director, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267-9679.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-3484. Requests must include the amendment number identified in this final rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On December 4, 1986, the Federal Aviation Administration (FAA) issued an advance notice of proposed rulemaking (ANPRM) (51 FR 44432; December 9, 1986) entitled "Control of Drug and Alcohol Use for Personnel Engaged in Commercial and General Aviation Activities." The ANPRM invited comment from the public on drug and alcohol abuse by personnel in the aviation industry and the options available to the FAA for regulatory or other action in the interest of aviation safety. The FAA received over 650 written comments in response to the issues raised in the ANPRM.

On March 3, 1988, the FAA issued a notice of proposed rulemaking (NPRM)(53 FR 8368; March 14, 1988) entitled "Anti-Drug Program for Personnel Engaged in Specified Aviation Activities." The NPRM set forth an analysis of the comments received on the ANPRM and proposed regulations for public comment. The FAA received over 260 written comments on the proposals contained in the NPRM.

The FAA also held a series of public hearings on the regulations proposed in the NPRM. These hearings were held on June 2, 1988, in Washington, DC; June 7, 1988, in Denver, Colorado; and June 9, 1988, in San Francisco, California. Each of the hearings was recorded by a court reporter. The transcript of each hearing and any statements or other material, submitted to the hearing panel during the hearings, have been placed in the public docket. This material also has been reviewed in the development of the final rule.

Current Rules. The FAA's comprehensive anti-drug program is one action in a long history of actions to combat the use of drugs and alcohol in the aviation industry. The focus of the majority of these actions has been on commercial aviation personnel, particularly the cockpit and cabin crew. For

example, pilots, flight attendants, flight engineers, and flight navigators may not act as a crewmember of a civil aircraft within eight hours after drinking an alcoholic beverage; while under the influence of alcohol; with 0.04 percent, or more, alcohol in their blood; or while using any drug that affects their faculties in any way contrary to safety. Also, crewmembers may be tested in the context of receiving medical care immediately after an accident. When there is a reasonable basis to suspect that one of these individuals has violated any of the above restrictions, these crewmembers must furnish, to the FAA, the results of any test taken within four hours of acting, or attempting to act, as a crewmember that indicates the presence of alcohol or any such drug in the person's system. Moreover, pilots, flight attendants, flight engineers, and flight navigators are required to submit to a test to indicate the percentage of alcohol in the blood when requested by a law enforcement officer who suspects that a crewmember may have violated a State or local law governing the operation of an aircraft while under the influence, or impaired by, drugs or alcohol.

The FAA may deny an application for a certificate or rating for up to one year, or may suspend or revoke an existing certificate or rating, in the case of any pilot, flight engineer, or flight navigator who has been convicted of violating a Federal or State law relating to drug trafficking or possession; who has violated the proscriptions described above; who has refused to furnish the results of any test that would indicate the presence of alcohol or drugs taken within four hours of acting, or attempting to act, as a crewmember; or who has refused to submit to an alcohol test requested by a law enforcement officer investigating violations of State or local laws. The FAA also may deny an application for a certificate or rating for up to one year, or may suspend or revoke an existing certificate or rating, in the case of any air traffic control tower operator, aircraft dispatcher, mechanic, repairman, or parachute rigger who has been convicted of a violation of a Federal or State law relating to drug trafficking or possession.

The Aviation Drug-Trafficking Control Act of 1984, which added language to § 602 and § 609 of the Federal Aviation Act of 1958, mandates that the FAA take certain actions regarding airmen involved in drug trafficking activities. The Administrator is required to revoke the airman certificate of any airman who has been convicted of violating any Federal or State law relating to a controlled substance, other than simple possession, if an aircraft was used in, or was used to facilitate, the commission of the offense and the person served as an airman, or was onboard the aircraft, in connection with the commission of the offense. The Administrator has no discretion to review the conviction for the substantive offense. Under the 1984 legislation, the Administrator was prohibited from reissuing a certificate to that airman for up to five years but could reissue a certificate after an absolute minimum of one year, in certain extremely limited circumstances, if revocation was excessive and contrary to the public interest. As part of the Federal Aviation Administration Drug Enforcement Assistance Act of 1988, Congress amended § 602 and § 609 of the FAAct, among other amendments to the Act, in October 1988. The statutory language now provides that the Administrator shall not issue an airman certificate to any person whose certificate has been revoked for aviation drug trafficking activities unless the airman is acquitted of the offense, a conviction upon which revocation is based is reversed on appeal, or the Administrator determines that issuance of an airman certificate will facilitate law enforcement efforts after a request from a Federal or State law enforcement official. The final rule requiring a comprehensive anti-drug program for employees in commercial aviation is consistent with these previous actions taken by the FAA.

The FAA's commitment to a drug-free workforce also applies to its own employees. The Department of Transportation began random drug testing of DOT employees in safety- and security-sensitive functions in September 1987. The Secretary's goal is to establish and maintain a drug-free workplace as intended by Executive Order 12564 and as directed by Presidential memorandum dated October 4, 1986. It is the opinion of the Department of Transportation that random drug testing is the most effective means of determining the presence of drugs or drug metabolites that may adversely affect an employee's performance of safety- or security-sensitive job functions. Pursuant to the Department's program, an employee of the Department will be removed from Federal service under several circumstances: refusal to enter or to successfully complete a drug rehabilitation or abatement program; repeat usage of drugs; refusal to provide a urine specimen for drug testing; adulteration or substitution of a urine specimen; on-duty use of illegal drugs; or a determination that a DOT employee has engaged in illegal drug trafficking.

In order to ensure that aviation safety is not compromised by a failure to detect drug users in the aviation industry, the FAA believes that it is appropriate and necessary to establish a comprehensive anti-drug program at this time.

Existing Industry Programs. As part of their comments to the ANPRM and the NPRM, many employers note that they have implemented drug testing programs or employee rehabilitation programs For example, although their drug testing programs were not specifically described, Martin Aviation implemented a drug testing program in February 1987 and Suburban Airlines has required preemployment drug testing of flight crew applicants for over a year. Federal Express Corporation currently conducts preemployment testing of all applicants and "reasonable suspicion testing" of all employees.

Tramco, Inc. is a certificated repair station employing over 600 individuals and repairing over 100 aircraft per year. Tramco instituted a drug testing and counseling program "several years ago" and believes that the program yields substantial benefits to both employees and employers. Tramco tests all applicants for jobs and conducts tests based on probable cause. Tramco's tests based on probable cause are triggered by reports of employee drug use, employee attendance patterns that may suggest a drug problem, accidents, and observation by supervisors. A Tramco employee who tests positive for drugs is suspended for a minimum of one week and may not return to work until a drug test shows no evidence of drug use. Tramco estimates that, consistent with general statistics, 20 percent of its workforce has had some involvement with controlled substances. As of the time of its comment to the NPRM, Tramco identified 10 percent of its employees as individuals who had used drugs.

Rocky Mountain Helicopters, Inc. implemented a drug testing program for its employees in July 1986. Rocky Mountain Helicopters tests all pilots, mechanics, managers, and others who can affect aviation safety using preemployment, random, probable cause, and postaccident testing. Rocky Mountain Helicopters does not pay an employee's rehabilitation costs but will consider rehiring any employee who completes an approved rehabilitation program. Petroleum Helicopters, Inc. began a preemployment and periodic testing program in 1982 and supports mandatory drug testing. Petroleum Helicopters denies employment to any applicant, and discharges any employee, who tests positive in a drug test. Petroleum Helicopters does not concur with the proposal to provide a rehabilitation opportunity to employees on the basis that an employer should not accept the risk of repeated illegal drug use among maintenance or flight personnel.

The FAA believes that the comprehensive anti-drug program, promulgated by this final rule, is not a novel concept. In light of the FAA's long history of regulatory action in the area of drug use in aviation and the significant number of industry drug testing programs currently implemented by aviation employers, the FAA believes that the agency is justified in requiring the commercial aviation industry to implement similar comprehensive anti-drug programs.

DISCUSSION OF COMMENTS:

General Overview of the Major Issues

The FAA received 261 comments in response to the NPRM. The FAA considered all timely-filed comments submitted in response to the NPRM and the testimony of 20 individuals who presented statements at the three public hearings held by the FAA. During the public hearings, the Secretary of Transportation, James H. Burnley, requested information from several individuals who presented statements at the hearings. The comment period for the NPRM closed on June 13, 1988. In order to accommodate the individuals who submitted supplemental information pursuant to the Secretary's request, the FAA also considered comments that were submitted as late as July 1, 1988.

There were several major themes presented by the commenters. Many commenters focus on the lack of evidence of significant drug use or drug abuse in the aviation industry. The commenters particularly stress this point with respect to the cockpit crew based on age, income, managerial supervision, close working relationships with peers, periodic medical exams to determine fitness for duty, and professionalism of the crew. Based on the lack of evidence, these commenters conclude that establishment of a drug testing program is unwarranted and unconstitutional. Regardless of the amount of evidence, the majority of commenters agree with the FAA's assessment that drug use and substance abuse have no place in the aviation environment. Some commenters note that the FAA's anti-drug stance is commendable, but the true issue is the type of program that evolves from that stance. Many commenters support the FAA's efforts to develop a comprehensive anti-drug program that would achieve a drug-free commercial aviation workforce and agree that a program to achieve a drug-free aviation environment is beneficial.

There is substantial, although not universal, support for a drug testing program using state-of-the-art urine testing. The gas chromotography/mass spectrometry (GC/MS) method, approved by the Department of Health and Human Services (DHHS), is recognized by the commenters as the most accurate method of analysis for the presence of drugs or drug metabolites in urine if rigorous collection and analysis procedures, such as those contained in the DHHS mandatory guidelines, are followed. (As discussed in detail elsewhere in this preamble, the Department of Transportation is publishing "Procedures for Transportation Workplace Drug Testing Programs" which are adopted in this final rule in lieu of the DHHS guidelines. These DOT-wide procedures closely resemble the DHHS guidelines and are used because the DHHS guidelines are not drafted for application by entities other than Federal agencies.) While some concerns were raised about the testing procedures, these concerns generally involve drug testing programs and procedures in the early 1980s that did not embody the critical safeguards of a properly-administered testing program.

Certain types of testing proposed in the NPRM receive significant support by the commenters. These types of testing include preemployment testing and postaccident testing. Periodic testing and testing based on reasonable cause received substantial support from the commenters. Some support for testing based on reasonable cause is predicated on traditional constitutional standards that apply to a search of the person.

There is significant and strongly-held opposition to random testing. However, the FAA's drug testing program, including random testing as a critical element, is supported by some commenters. The objections to random testing are based on legal or constitutional issues, privacy issues, and the invasive nature of random testing based on personal grounds, cost issues, and the absence of a demonstrated need for a comprehensive testing program assuming a low level of drug use in the industry.

Of those commenters who address the issue, there is agreement that the complexity, cost, and operational impact burdens of the rule would be significantly greater on small entities in the aviation industry. Finally, the commenters express significantly different opinions in the area of employee assistance programs (EAP). The primary differences surround the issues of the circumstances under which an employee is offered an opportunity for rehabilitation and the entity or individual who is responsible for payment of rehabilitation costs. Several major air carriers have already addressed this issue through insurance coverage or by labor-management agreement. However, even some of these organizations, although supportive of EAPs, oppose a broad, Federally-mandated EAP requirement. Labor organizations clearly support expansive EAP opportunities and services. Small entities oppose EAP requirements on many grounds, including cost and possible negative coworker attitudes exhibited toward rehabilitated employees.

The commenters differ regarding the method of achieving a drug-free aviation workforce and the manner in which the FAA would be involved in any program. The primary differences arise regarding the type and scope of testing used to identify sensitive safety- or security-related personnel who use drugs and the choices offered to those individuals who are identified as drug users.

Labor Unions and Organizations Representing Employees. In general, unions or organizations representing employees in aviation oppose the comprehensive mandatory drug testing proposed in the NPRM. Labor unions and employee organizations favor EAP and broad rehabilitation rights for all employees. These organizations oppose random drug testing but, with some qualifications, these organizations see a role for preemployment testing, postaccident testing, testing based on reasonable cause, and testing during and after rehabilitation to monitor an individual's progress.

The International Association of Machinists and Aerospace Workers (IAM) opposes any industry-wide drug and alcohol testing until hard evidence of an industry drug problem that jeopardizes aviation safety is substantiated and documented. The Independent Union of Flight Attendants (IUFA) opposes all forms of mandatory drug testing of employees. The Independent Federation of Flight Attendants (IFFA) objects generally to drug testing as unwarranted governmental intervention into labor-management relations but would support preemployment screening and postaccident testing if reasonable cause for such testing can be objectively illustrated. IFFA objects specifically to random testing in any form as unconstitutional and contrary to labor law. IFFA believes that the focus of any drug testing program should be limited to impairment on the job and states that no currently available testing procedure can determine drug impairment on the job. The Association of Flight Attendants (AFA) believes that drug testing of flight attendants is not warranted. However, AFA and the Association of Professional Flight Attendants (APFA) support preemployment testing of applicants

seeking jobs in the industry if that testing is not used to discriminate against applicants on the basis of disabilities unrelated to drug use. AFA also would not oppose postaccident testing of pilots or probable cause drug testing of employees who are under the influence of drugs if these samples were collected by an FAA inspector. APFA opposes random testing, postaccident testing absent individualized suspicion, and testing based on reasonable cause as proposed. The Flight Engineers' International Association (FEIA) opposes all testing except in the case where probable cause exists to believe that an employee is impaired by drugs; in order to protect employees from harassment, FEIA states that any determination to test an employee based on probable cause for impairment should be reviewed by a neutral party. The Teamsters Union could support preemployment screening; testing based on reasonable suspicion to believe that an employee's actual or current impairment has, or is, affecting job performance or workplace safety; periodic testing to maintain medical certification; and testing after an accident or a "near miss" if there is a reasonable basis to suspect that human error may have been a causal factor.

The Air Line Pilots Association (ALPA), representing 41,000 pilots employed by 44 large and small airlines, is firmly opposed to all forms of drug and alcohol abuse by airline personnel. ALPA primarily is opposed to random and periodic testing based on their belief that these tests are offensive, ineffectual, unjustified, and unconstitutional. ALPA believes that if there is drug use among commercial pilots, the incidence of drug use would be less than 0.5 percent. On this basis, ALPA asserts that widescale random testing of the relatively small aviation population will result in a significant number of false-positive test results. ALPA does not oppose testing prior to employment, testing after an accident, testing in circumstances where there are reasonable grounds to suspect drug use, and testing to monitor rehabilitation.

ALPA believes that the approach to the drug abuse problem articulated in the NPRM is inappropriate. ALPA instead urges the FAA to consider an approach similar to the Human Intervention Motivation Study (HIMS) program developed to identify and treat alcoholism among pilots. The key elements of the HIMS program are education, peer involvement, intervention, confrontation, and rehabilitation. Although the HIMS program has focused on treatment of pilots who demonstrate a problem with alcohol, ALPA sponsored a HIMS drug abuse training program in November 1987 which the FAA attended.

Labor and employee organizations also strongly support limitations on an employer's ability to exclude any employee from an opportunity for rehabilitation and limitations on an employer's ability to discharge an employee. Most organizations, including IUFA, IFFA, AFA, and APFA, strongly support regulations that would require an employer to establish and participate in comprehensive, nonpunitive EAP services established by collective bargaining or negotiation and available to all employees. ALPA agrees that any regulations should clearly recognize that unions have collective bargaining rights under Federal labor laws; ALPA suggests that any anti-drug regulation promulgated by the FAA should ensure that the regulatory requirements do not interfere or override the union's collective bargaining rights. FEIA supports EAP services, mandatory for each carrier and paid for by the carrier, for rehabilitation of all employees regardless of the circumstances that precipitated a drug test. IAM suggests that FAA regulations should be guidelines, applicable only to carriers who have a documented substance abuse problem affecting aviation safety, that stress education, prevention, rehabilitation, and protection of an employee's privacy.

Employers and Organizations Representing Employers. Most employers support mandatory drug testing of employees and limitations on an employee's opportunity for rehabilitation. Part 121 and Part 135 certificate holders do not express the same opinions regarding the proposals in the NPRM. The general views held by Part 121 certificate holders are characterized by the comments submitted by the Air Transport Association of America (ATA). ATA supports the FAA's comprehensive drug testing program and favors an opportunity for rehabilitation only for those employees who volunteer for rehabilitation. In the area of EAP services, Part 121 certificate holders generally favor flexibility and latitude for an employer to design a company EAP. American Airlines, however, favors industry-wide standard EAP requirements.

Most Part 135 certificate holders and small aviation businesses object to the drug testing requirements proposed in the NPRM. The Regional Airline Association (RAA), which represents many Part 135 certificate holders, opposes random testing; RAA also suggests that the random selection rate be set at a rate less than the maximum 125 percent rate proposed in the NPRM if the FAA mandates

a random testing requirement. The primary objection of Part 135 certificate holders and small businesses is to the proposed requirement to offer an opportunity for rehabilitation to an employee. These organizations oppose mandated rehabilitation because of the economic burden that would be imposed on a small operator. The National Air Transport Association (NATA) suggests, in its June 2, 1988 testimony, that Part 135 certificate holders employing 100 or fewer covered employees should be exempted from all requirements of the proposed anti-drug program.

Grace Flying Service, Inc., a Part 135 certificate holder conducting single-engine air taxi services, flight instruction, and aerial application services, opposes drug testing of employees. Grace Flying Service strenuously objects to any drug tests, whether scheduled or random, and would be reluctant to test its employees even if testing is mandated by the FAA.

The National Business Aircraft Association (NBAA) concurs with the FAA's anti-drug program with certain reservations. NBAA primarily is concerned about the constitutionality of random drug testing and the FAA's reliance on laboratory testing results that may be unreliable in detecting drugs or drug metabolites proposed to be analyzed in the NPRM.

Individual Commenters. The FAA received 170 comments from individuals. The majority of these individuals are pilots employed by major airlines and self-employed pilots who would be subject to the requirements of the proposed rule. The FAA also received comments from general aviation pilots and individuals who are not employed in the commercial aviation industry. The vast majority of the individual commenters oppose the drug testing requirements of the proposed rule based on constitutional objections, failure of the FAA to demonstrate a drug problem in the aviation community, and perceived inaccuracies of drug testing collection and analysis. A minority of individual commenters generally support the FAA's anti-drug proposals and primarily support the testing requirements. These individuals are private citizens or consumers who base their support on the need to ensure that aviation personnel are drug free, particularly on the job. The strongest individual support is expressed by letters from the family and friends of a passenger who was killed in the crash of Continental Air Express Flight 2286 near Durango, Colorado. The comments from the family and friends of the deceased passenger urge the FAA to do everything within its statutory authority to prevent a similar tragedy in the future.

SPECIFIC ISSUES

Discussion of the constitutional issues regarding random and periodic drug testing

A number of commenters have questioned the constitutionality of drug testing programs for aviation personnel. Although the state of the case law is still evolving in rapid fashion and no definitive Supreme Court resolution of many relevant and complex issues has been achieved, the FAA feels confident that testing required under this rule will pass constitutional scrutiny. The FAA recognizes that there are legitimate and significant constitutional concerns surrounding drug testing in general and random drug testing as a specific component of drug testing. The FAA acknowledges the current widescale litigation and apparent disparate judicial opinions on drug testing programs.

FAA Response. The principles of the Fourth Amendment to the U.S. Constitution are paramount in scrutinizing the fundamental legality of many drug testing programs. As a threshold legal matter, the Fourth Amendment applies to "searches" conducted or mandated by the government and protects individuals against "unreasonable searches and seizures." Action of a private party does not constitute State (or Federal) action unless there exists a close nexus between the state and the action in question. *Jackson v. Metropolitan Edison*, 419 U.S. 345 (1974); *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163 (1972).

Assuming that the drug testing programs called for under the final rule do implicate the government, a second issue then arises concerning whether urine tests under these programs are "searches" within the meaning of the Fourth Amendment. Although most courts to address the issue to date have ruled that toxicological testing of employees for the purpose of determining fitness for duty is a search within the meaning of the Fourth Amendment, the issue is not entirely settled. *See Wyman v. James*, 400 U.S. 309, 317-338 (1971) (government welfare caseworker's "home visit" as a precondition for assistance payments is not a Fourth Amendment search). *See also, Lovvorn v. City of Chattanooga*, 846 F.2d 1539, 1553-1554 (6th Cir. 1988) (Guy, J., dissenting), *panel decision vacated and rehearing en banc ordered*, (August 3, 1988); *National Treasury Employees Union v. von Raab*, 808 F.2d 1057, 1060, 1062 (5th Cir. 1987) (Higginbotham, J., concurring). *Cf. Mack v. United States, F.B.I.*, 814 F.2d 120, 125 n.2 (2nd Cir. 1987).

Also assuming, *arguendo*, that urine tests of aviation personnel for illegal drugs are "searches" within the meaning of the Fourth Amendment, it is clear that while searches ordinarily must be conducted pursuant to a warrant issued on probable cause grounds, such a requirement is not always necessary. *Almeida-Sanchez v. United States*, 413 U.S. 266, 277 (1973)(Powell, J., concurring). Where, for example, ". . .the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search. . .," [*Camera v. Municipal Court*, 387 U.S. 523, 533 (1967)], the Supreme Court has routinely held that a warrant is not required by the Fourth Amendment. *See e.g., Griffin v. Wisconsin*, 107 S.Ct. 3164, 3167 (1987); *New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985). The Supreme Court has likewise found that the probable cause standard is inappropriate where it would defeat the purpose that the search is designed to achieve. *See e.g., New Jersey v. T.L.O.*, 469 U.S. at 340-342; *O'Connor v. Ortega*, 107 S.Ct. 1492, 1501-1502 (1987) (plurality opinion) (upholding the search of a public employee's office for work-related noninvestigatory reasons on less than probable cause grounds); *United States v. Martinez-Fuerte*, 428 U.S. 543, 560-561 (1976) (footnotes omitted) (while ". . .some quantum of individualized suspicion is usually a prerequisite to constitutional search or seizure[,] . . . the Fourth Amendment imposes no irreducible requirement of such suspicion").

Rather, "[t]he fundamental command of the Fourth Amendment is that searches and seizures be reasonable . . ." *New Jersey v. T.L.O.*, 469 U.S. at 340. In determining the reasonableness of a search, the Supreme Court has repeatedly stressed the importance of the facts particular to the search while acknowledging that the test of reasonableness ". . .is not capable of precise definition or mechanical application." *Bell v. Wolfish*, 441 U.S. 520, 559 (1979). In analyzing a drug testing program, ". . .what is reasonable depends on the context within which a search takes place." *New Jersey v. T.L.O.*, 469 U.S. at 337.

In scrutinizing whether particular searches comport with the Fourth Amendment, courts have adopted a balancing test. In general, to support a claim that a search of an individual or the individual's property is reasonable, the government must demonstrate that, on balance, the public's legitimate interest in conducting the search outweighs the individual's legitimate expectation of privacy. *See e.g., United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985); *United States v. Villamonte-Marquez*, 462 U.S. 579, 588 (1983); *Delaware v. Prouse*, 440 U.S. 648, 654 (1979). Thus, the courts must ". . .consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted." *Bell v. Wolfish*, 441 U.S. at 559.

Viewed in this light, it is beyond dispute that the public has an overriding interest in assuring that sensitive safety- and security-related aviation personnel perform their duties free of illegal drugs. The drug problem in society in general and evidence of drug use in the aviation industry in particular are documented elsewhere in the preamble of this final rule. The impairing effects of illegal drugs and the substantial risks to public safety posed by aviation employees who use illegal drugs underlies the compelling governmental interests in promulgating this final rule.

In contrast, the drug testing requirements of the final rule involve a minimal invasion of privacy. As the Supreme Court has indicated, where searches are undertaken in situations where individualized suspicion is lacking, other safeguards must be relied upon to ensure that the discretion of the party conducting the search is properly defined and the scope of the search is limited. *See Delaware v. Prouse*, 440 U.S. at 654-655 (footnote omitted); *New York v. Burger*, 107 S.Ct. 2636, 2648 (1987). The drug testing requirements of the final rule place significant constraints on an employer's discretion in conducting drug testing. For example, the requirement for random drug testing calls for selection of an employee to be tested in a scientifically-acceptable manner, such as use of a computer-based random number generator. Requirements for testing based on reasonable cause or postaccident testing also are severely circumscribed in order to limit an employer's discretion in administering such tests to employees. Also, the FAA will review the actual employer anti-drug programs, required to be submitted to the agency in accordance with provisions of the final rule, to ensure that discretion is in fact limited in the administration of drug tests under these programs. *Cf. National Treasury Employees Union v. Reagan*, No. 86-4058, slip op. at 14 (E.D.La. April 29, 1988) (holding that the constitutionality of Executive Order requiring Federel agencies to establish drug testing programs for Federal employees was not ripe for review since each agency had not implemented a finalized, particular plan).

The actual testing procedures that each employer is required to implement under this final rule also are tailored narrowly to respect an employee's reasonable expectation of privacy. The DOT procedures governing collection of urine samples, which are based on the DHHS guidelines, are carefully

designed to preserve privacy while protecting the integrity of the sample. The final rule contains a number of important employee safeguards, including privacy during collection under the majority of circumstances, stringent laboratory safeguards, and provisions for challenging results. Other employee drug testing programs incorporating the collection and testing procedures of the DHHS guidelines have been upheld against constitutional attack. The DOT procedures so closely resemble the DHHS guidelines in all pertinent respects that the Department of Transportation is confident that these procedures also will be upheld. *See American Federation of Government Employees v. Dole*, 670 F.Supp. 445 (D.D.C. 1987), *appeal docketed*, No. 87-5417 (D.C.Cir. Dec. 11, 1987)(upholding the constitutionality of the Department of Transportation program for random drug testing of safety- and security-sensitive agency employees); *National Association of Air Traffic Specialist v. Dole*, 2 Ind.Emp.Rts. Cases (BNA) 68 (D.Alaska 1987) (denying a motion for a preliminary injunction against the FAA's use of urinalysis drug testing as part of an annual physical examination of the agency's air traffic specialists).

Equally significant is the fact that urine drug testing of sensitive safety- and security-related employees is to be conducted in the "context" of the employment relationship. As the Supreme Court has pointed out, "[t]he operational realities of the workplace . . . may make *some* employees' expectation of privacy unreasonable." *O'Connor v. Ortega*, 107 S.Ct. at 1498. This is particularly important in circumstances where the employee works in an industry in which his or her activities are subject to extensive regulation. Thus, persons who work in such "closely regulated" industries have a "reduced expectation of privacy" [*New York v. Burger*, 107 S.Ct. at 2646] and, "in effect consent[] to the restrictions placed upon them" [*Almeida-Sanchez v. United States*, 413 U.S. at 271]. For these very reasons, two Federal courts of appeals have upheld urinalysis testing, in the absence of particularized suspicion, in industries where pervasive regulation has reduced an employee's expectation of privacy. *See Rushton v. Nebraska Public Power Dist.*, 844 F.2d 562, 566 (8th Cir. 1988) (nuclear plant operators); *Shoemaker v. Handel*, 795 F.2d 1136, 1142 (3rd Cir.), *cert. denied*, 479 U.S. 986 (1986) (jockeys); *Policemen's Benevolent Ass'n, Local 318 v. Township of Washington*, 850 F.2d 133 (3rd Cir. 1988) (police officers).

It is beyond dispute that aviation has always been subject to pervasive regulation by the government and by employers themselves. As one Federal district court has noted:

> [t]he rationale of the Third Circuit upholding drug urinalysis for jockeys in order to protect the integrity of horse racing is even more compelling when the public need for air safety is considered. If horse racing is recognized as a closely or pervasively regulated activity, then aviation activities and the aviation industry are as much or possibly more closely regulated.
>
> Indeed, the creation of a federal agency charged with the responsibility for ensuring safe air travel reflects the public interest in air safety. . . .[T]he public perception of air safety not only is critical to the airline industry but to all who fly. . . .[C]lose and pervasive regulation of aviation related activities is well established and . . . air safety relates to serious risks or hazards which require close and constant attention. *National Association of Air Traffic Control Specialists v. Dole*, 2 Ind.Emp.Rts. Cases (BNA) at 78.

The FAA recognizes that a number of Federal and State courts have rejected government-mandated drug testing program on Fourth Amendment grounds. However, even courts striking drug resting programs have recognized that drug testing is appropriate in other contexts. *See e.g., Louvorn v. City of Chattanooga*, 846 F.2d at 1553-1554 (Martin, J.) ("When determining, then, whether a mandatory drug search is 'reasonable,' we believe that, as the costs to society of an impaired employee increase, the requisite level of suspicion that a drug problem exists decreases."); *Policemen's Benevolent Ass'n, Local 318 v. Township of Washington*, 672 F.Supp. 779, 792 (D.N.J. 1987), rev'd, 850 F.2d 133 (3rd Cir. 1988) ("[T]he need to prevent a major airline disaster presents a far more compelling rationale than those presented by the municipality in support of testing its police officers."); *American Federation of Government Employees v. Meese*, No. C-88-1419-SAW (N.D.Cal. June 16, 1988) (issuing a preliminary injunction against a Bureau of Prison plan to test randomly all agency employees but nonetheless noting that "[t]here are cases in which compulsory drug testing may be justified in the interest of public safety or security." Memorandum opinion at 2).

The FAA also is aware of the recent Ninth Circuit decision holding unconstitutional regulations promulgated by the Federal Railroad Administration—mandating blood and urine tests of railroad employees who are involved in certain train accidents and fatal incidents and authorizing breath and urine tests after certain accidents, incidents, and rule violations-because the rules do not require a

showing of "particularized suspicion" of drug or alcohol impairment prior to testing. *Railway Labor Executives' Association v. Burnley*, 839 F.2d 575 (9th Cir.), *cert. granted*, 108 S.Ct. 2033 (1988). The Ninth Circuit based its views, in part, on the proposition that ". . .the vast bulk of [railroad] safety regulation is directed at owners and managers of railroads, not employees." *Id.* at 585. The U.S. government disagrees with the Ninth Circuit panel's decision, which is contrary to rulings in other Federal appellate courts. Moreover, contrary to the Ninth Circuit's views of the Federal Railroad Administration's jurisdiction over railroad employees, FAA's jurisdiction over employees in the aviation industry is clear and should not be subject to challenge on this basis.

The Supreme Court has granted the government's petition for a *writ of certiorari* in *Railway Labor Executives' Association v. Burnley* and has ordered that this case be argued this term "in tandem" with *National Treasury Employees Union v. von Raab*, 816 F.2d 170 (5th Cir. 1987), *cert. granted*, 108 S.Ct. 1072 (1988) (upholding drug testing of applicants for critical safety or security sensitive positions in the U.S. Customs Service). Decisions in these cases may not be forthcoming until the spring of 1989. However, in the absence of Supreme Court guidance, the FAA remains convinced that the need for drug testing by urinalysis in the aviation industry to determine fitness for duty of sensitive safety- or security-related employees and, thereby, to ensure public safety clearly outweighs the privacy interest of individuals in this class.

While not totally free from doubt, it is the opinion of the Department of Transportation that the FAA's anti-drug program, and similar regimens proposed by other administrations within the Department, will be determined to be constitutional. The critical need for properly-administered drug testing to ensure that employees in the transportation industry do not have drugs or drug metabolites in their system while performing sensitive safety- and security-related functions outweighs the reduced privacy interest of these employees.

Lack of Evidence of a Drug Problem in the Aviation Industry

Nearly every commenter who opposes drug testing in general, and random testing in particular, and even commenters who support the comprehensive drug testing proposals, raise the issue of lack of evidence of a drug problem in commercial aviation. On this basis, the commenters assert that the FAA can not justify the comprehensive proposals contained in the NPRM. ALPA, the Aircraft Owners and Pilots Association, (AOPA), and the organizations representing flight attendants maintain that the industry should police itself in the area of drug use and abuse.

FAA Response. The FAA made no attempt to obscure the lack of widespread evidence of drug use or abuse among commercial aviation personnel. However, after publication of the NPRM in the *Federal Register* on March 14, 1988, federal investigators released preliminary data showing that the captain of Continental Air Express Flight 2286, which crashed in Durango, Colorado on January 19, 1988, may have been impaired by drugs while operating the aircraft. A preliminary report of the National Transportation Safety Board (NTSB) indicates that toxicological test results show that the captain of Flight 2286 had cocaine and a cocaine metabolite in his system at the time of the crash. Seven passengers and the pilot and copilot died in the accident.

In 1983, the NTSB issued an Aircraft Accident Report (NTSB/AAR-84/11) on the crash of Central Airlines Flight 27 in Newark, New Jersey, on March 30, 1983. The NTSB determined that the probable cause of the crash of the Gates Learjet nonscheduled, cargo-carrying aircraft included "impairment of the flight crew's judgment, decisionmaking, and flying abilities by a combination of physiological and psychological factors." The NTSB did not conclude that drug-impaired performance was the sole cause of the crash. However, the report does state that test results indicate that the captain had used marijuana and the copilot had used, or been exposed to, marijuana within the 24 hours preceding the crash. Also, toxicological tests indicate that the copilot's urine showed evidence of contra-indicated use of an antihistamine drug.

Additional evidence of illegal drug use by individuals employed in the airline industry appeared in the fall of 1986, when a series of articles in the Pittsburgh Press, based on interviews with emergency room staffs at area hospitals, highlighted 23 cases of airline flight crew drug abuse. Twenty of those cases involved cocaine overdoses, two were heroin reactions, and one dealt with valium and alcohol. Twelve cockpit crewmembers and eleven cabin crewmembers were among those treated by Pittsburgh area hospitals for drug use. Personnel at those hospitals also indicated that they had treated numerous case of drug abuse among non-flight employees, such as mechanics. The Pittsburgh Press also surveyed

17 drug treatment clinics across the country and found that more than 69 pilots had been treated for cocaine addiction. A subsequent FBI investigation of drug use in the Pittsburgh area produced evidence that a number of airline employees, including cockpit, cabin, and ground crewmembers, had used cocaine, marijuana, and other illegal drugs, sometimes on duty or shortly before reporting for duty.

The NPRM also included comments by a Part 121 and Part 135 certificate holder that implemented an unannounced drug testing program applicable to its employees. This company reported that 2.5 percent of its 180 pilots and 4 percent of its 240 mechanics tested positive for a trace, or more, of illegal drugs in their system. Data from the airline industry regarding preemployment screening of applicants for various positions indicate that the number of positive drug tests ranges from 4.2 percent to 20 percent with results as high as 25 percent to 30 percent in some geographical locations.

Although this data does not show an overwhelming drug problem in commercial aviation, it does show concrete evidence of drug use in the commercial aviation sector. The FAA recognizes that commercial aviation personnel operate in a professional and highly-regulated environment. However, pursuant to the FAA's statutory mandate to ensure aviation safety, the FAA also must acknowledge that commercial aviation personnel are not immune to, nor insulated from, drug use or abuse that may affect safety-critical job performance. The FAA believes that any drug use in commercial aviation warrants preventive and proactive intervention by the FAA to ensure aviation safety. The FAA believes that this view is not inconsistent with the increasing awareness of several aviation employers who currently have, as disclosed in their comments, basic drug testing and employee rehabilitation programs for their employees.

Although not a universally-expressed opinion among the commenters, ATA "fully embrace[s] the philosophy, expressed in the NPRM, that individuals who wish to work in aviation activities that involve the safety of passengers, co-workers, and others must not use illicit drugs, even while off-duty." Several commenters, including RAA, note that to the extent any drug use is occurring in the aviation industry, it is a "safety issue and it is well within the purview of the FAA to develop a comprehensive, nationally applicable set of regulations." The Equal Employment Advisory Council (EEAC) believes that the workplace is an appropriate environment to intervene in the process of individual substance abuse. EEAC also believes that the FAA has correctly concluded that the purpose of drug testing is not to determine that an employee is impaired by drugs at the time of testing. Instead, testing is used to enable an employer rationally to determine if an employee has used drugs and to conclude reasonably that there is a possibility of future impairment based on subsequent use.

Comments that the Proposed Rules are Politically-Motivated

The FAA received many comments that state that the comprehensive anti-drug program proposed by the FAA is based solely on political perceptions and goals. The commenters stress that DOT and the FAA have surrendered to the public hysteria over drug use and unfavorable press reports of drug use in the aviation industry.

FAA Response. Because this issue is raised so frequently by the commenters, the FAA chooses to address these comments although they are beyond the scope of the rulemaking. The war against drugs is one of this Administration's top priorities. Also, Congress has enacted a substantial amount of legislation to address the use, distribution, importation, and interdiction of drugs in the United States and is considering enactment of additional legislation. Moreover, a significant number of public opinion polls indicate that the American public is deeply concerned about the effect of drug use by individuals in critical safety occupations, including aviation. The fact that the Administration, Congress, and the public are concerned about drug use is noteworthy. However, the FAA is issuing the comprehensive anti-drug program in this final rule because it is consistent with the FAA's statutory duty to promulgate minimum standards to ensure and promote aviation safety.

DHHS Guidelines

The FAA received numerous comments, including comments from drug testing laboratories and companies supplying drug testing equipment, on the guidelines for drug testing promulgated by the Department of Health and Human Services (DHHS). Many of the commenters state that the certification requirements for drug testing laboratories are too rigid because the DHHS guidelines require laboratories to have the capability to do both initial and confirmation testing at the same laboratory site. The Director of the Santa Maria Public Airport District and Psychemedics Corporation, a commenter at the San Francisco public hearing, suggest that the FAA use analysis of hair, in lieu

of urinalysis testing, to test for drugs on the basis that hair analysis may be more accurate and more reliable. Psychemedics Corporation proposes that analysis of hair samples would produce more complete results because hair contains a "longitudinal" history of drug use that could reveal drug use in excess of 90 days before analysis. This commenter also notes that the two-step process of immunoassay and GC/MS analysis would still be used; the only change would be the material that was analyzed. Federal Express strongly opposes implementation of the DHHS guidelines because they are overly-burdensome on carriers with operations in multiple locations.

Some commenters also state that a split sample should be obtained from each individual in order to ensure the accuracy of the analysis. Several commenters raise the issue that specimens may be used by an employer to test for physiological states, including epilepsy and pregnancy, to discriminate against applicants and employees. A few commenters consider the requirement of "monitored" specimen collection, whether by listening to or directly observing an individual, to be embarrassing and intrusive.

The AMA opposes the proposal to require employers to comply with the DHHS guidelines. The AMA states that these requirements would result in an undue hardship on aviation medical examiners who must comply with chain-of-custody procedures designed to ensure the integrity of the specimen.

The NTSB strongly concurs in the requirement that drug testing laboratories that analyze specimens pursuant to the drug testing program must meet the scientific and technical DHHS guidelines and must be certified by the Department of Health and Human Services. Insofar as the DHHS guidelines are inconsistent with other NTSB comments, the NTSB recommends that the FAA revise the guidelines for the industry drug testing program. ATA agrees that only DHHS-approved labs should be used for analyzing specimens but that the DHHS guidelines should be tailored to accommodate the particular needs of the aviation industry.

The SYVA Company and Drug Screening Systems, Inc. submitted comments to the FAA on the DHHS guidelines. Both companies are involved in the manufacture and supply of drug screening systems and equipment. These companies urge caution in the FAA's proposal to adopt the DHHS guidelines based on the restrictive and possibly burdensome nature of the requirements on employers required to conduct drug tests pursuant to the rule. These companies address several issues, including batch requirements, on-site collection, threshold drug levels, and development of new testing procedures not permitted under the current DHHS guidelines.

IFFA feels strongly that the Enzyme Multiplied Immunoassay Technique (EMIT) test should not be used as part of laboratory analysis of specimens because the test detects only the presence of a drug metabolite of the active drug and it often results in false-positive results, false-negative results, or misidentified results.

ALPA generally supports the proposal to make the DHHS guidelines applicable to collection and analysis of specimens. However, ALPA believes that the FAA's regulation should contain additional employee safeguards. First, the regulation should require split samples during collection. Second, the regulation should require that threshold drug levels determined by a confirmation test be consistent with the initial test to account for quantitative discrepancies in test results that are not attributable to deterioration of the sample. Third, ALPA suggests that an employee should be able to present the results of an independent test result to an MRO during review of test results to determine the validity of a positive test result. Fourth, the regulation should allow labor and management, through collective bargaining, to inspect laboratories and to perform quality control and administrative functions related to any anti-drug program.

Labor unions, including TWU and the Teamsters Union, advocate development and implementation of separate or additional guidelines to safeguard the selection and performance of laboratories analyzing specimens for drugs or drug metabolites.

EEAC believes that the DHHS guidelines are a valuable contribution to the goal of establishing procedural norms in collection and testing of specimens. However, EEAC believes that employers should establish individual procedures to ensure the integrity of a sample and its analysis. EEAC emphasizes that it is inappropriate for the FAA to impose such detailed requirements on private employers.

FAA Response. In the NPRM, the FAA proposed that all collection of specimens and drug testing take place in accordance with the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (53 FR 11970; April 11, 1988). The DHHS guidelines describe the collection and testing procedures applicable to all drug testing in the Federal government, and they include safeguards for the accuracy and privacy of collection and testing.

The Department of Transportation has determined that certain modifications of the DHHS guidelines are appropriate in the context of this and other DOT-operating administration drug-free workplace regulations. The result will be the DOT "Procedures for Transportation Workplace Drug Testing Programs," which will be codified at 49 CFR Part 40. These DOT procedures are intended to preserve, to the greatest extent practicable, the important safeguards provided by the DHHS guidelines.

Some of the modifications to the DHHS guidelines will be editorial in nature (e.g., references to responsibilities of "agencies" are changed to references to "employers"). Other modifications are intended to take into account differences in the situations of Federal agencies and DOT-regulated industries. For example, in testing at remote sites, DOT-regulated industries may find it necessary to conduct some kinds of testing in medical facilities or through the use of mobile units, rather than the more permanent collection sites contemplated by the DHHS guidelines. It may not be practicable for regulated employers to maintain on-site permanent logbooks. Consequently, the DOT procedures would permit alternative collection and recordkeeping procedures in these circumstances.

The Office of the Secretary in the Department of Transportation will publish elsewhere in today's *Federal Register* an interim final rule with request for comments entitled, "Procedures for Transportation Workplace Drug Testing Programs," that will codify the Department of Health and Human Services guidelines for drug testing at 49 CFR Part 40. This new part will set forth requirements for such things as specimen collection procedures, laboratory procedures, and quality assurance and certification procedures. The rule will provide guidance on how this rule shall be implemented.

During the comment period on the FAA's NPRM, and those rules proposed by other DOT operating administrations, comments were received concerning the DHHS guidelines. These comments are noted in this preamble and also will be transferred to the Department of Transportation to be incorporated in the docket for the Office of the Secretary (OST) interim final rule creating 49 CFR Part 40. OST will respond to those comments, as well as comments received during the comment period for Part 40, in its notice following the end of that comment period.

The FAA proposed only urine testing in the proposals contained in the NPRM. The suggestion of drug testing using analysis of hair specimens raises an issue within the expertise of the Department of Health and Human Services. Thus, at this time, DOT and the FAA do not intend to deviate from urinalysis as the technique for determining the presence of drugs or drug metabolites in an employee's system.

The FAA acknowledges the AMA comments regarding the inability of all aviation medical examiners to comply with the collection and chain-of-custody procedures contained in the DHHS guidelines due to the lack of appropriate facilities for collection. The FAA does not agree with the AMA that the requirements are overwhelming or overly-burdensome. Although the AMA was not specific regarding its objection to the collection and chain-of-custody procedures, DOT has included provisions in the DOT procedures to address some of the difficulties associated with collection and chain-of-custody procedures that may not have been appropriate for private entities. However, the FAA and DOT believe that strict collection and chain-of-custody procedures are critical to ensure the integrity and identity of a specimen provided by an employee. Thus, DOT has retained these protections in its modification of the DHHS guidelines. Moreover, only those aviation medical examiners who choose to provide this service to commercial aviation personnel during a physical examination are required to conform to the minimum procedures contained in the DOT procedures.

Consistent with the suggestion of the NTSB and other commenters, the Department of Transportation will modify the DHHS guidelines to tailor the provisions for application by private entities. The DOT procedures will not modify the basic, technological aspects of the rule (e.g., DHHS certification of laboratories, testing methodologies, collection procedures, and chain-of-custody procedures). Any arguably substantive changes from the DHHS guidelines will be included only to reduce practical and administrative burdens on private entities. These changes will be discussed in an ancillary document published by the Department of Transportation in the *Federal Register*. DOT and the FAA believe that the DOT procedures will provide adequate and appropriate procedures for collection and testing of samples. Although the FAA anticipates that the DOT procedures will prove to be an effective and efficient method of collection and testing, experience under the testing program or a change in the circumstances or needs of the industry may warrant further regulatory revisions in the future.

Accuracy of Drug Test Results

Many commenters base their opposition to drug testing on the perceived inaccuracy of analysis and test results. The commenters include the issues of false-positive test results, passive inhalation of illicit drugs, misidentification of licit drugs, and ingestion of food substances, including poppy seeds, resulting in a positive drug test result.

FAA Response. The FAA is aware of these expressed concerns because each of these issues surfaced in the early 1980s with the first series of drug testing programs introduced in the military and the private sector. In the early years of drug testing and analysis, laboratory security and analytical procedures had not reached today's level of sophistication. False-positive test results occur primarily in analysis of a specimen during an initial screening test, although contemporary screening tests, such as immunoassay tests, have become extremely accurate and approach 99 percent accuracy levels. Despite its increased accuracy, the initial screening test remains a less expensive test used only to yield a preliminary indication of the possible presence of drugs or drug metabolites. In order to ensure the integrity and accuracy of any test result, each positive initial screening test result must be confirmed using GC/MS analysis or another confirmatory procedure that may be subsequently approved by DHHS and incorporated into the DOT procedures. The GC/MS confirmation test is an extremely accurate and sophisticated test and is virtually error-free when used in compliance with the DHHS guidelines. The DOT "Procedures for Transportation Workplace Drug Testing Programs" (49 CFR Part 40), will be essentially identical to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services on April 11, 1988.

Employers must comply with the DOT procedures when conducting a testing program pursuant to the final rule. Like the DHHS guidelines, the DOT procedure will provide a system of checks and balances during collection and analysis of specimens. This system ensures the integrity and accuracy of the tests using appropriate scientific methods and rigid chain-of-custody procedures. An employer may only use a laboratory that complies with the DOT procedures. Also, an employer may only use a laboratory that has been certified by DHHS to process and analyze specimens required by the FAA rule. The DOT procedures regarding testing methodologies and technical matters will be identical to the DHHS guidelines. Thus, employers will be able to use any DHHS-certified laboratory since the laboratories will not necessarily be required to use different analytical techniques and testing methodologies for different entities conducting testing. The Department of Transportation expects that sufficient laboratories will have been certified for drug analysis by the Department of Health and Human Services by early 1989. However, the FAA will extend the compliance dates contained in this final rule if DHHS has not certified a sufficient number of laboratories to efficiently and accurately process and analyze specimens pursuant to the requirements of this final rule.

Since the mid-1980s, laboratories have become increasingly sophisticated in their analytical methods and chain-of-custody procedures. Many laboratories have compiled extensive records demonstrating scientific accuracy and protection of individual specimens. For example, CompuChem Laboratories, a major drug testing laboratory, has analyzed over 500,000 urine samples, conducting discrete testing for nine different drugs which resulted in nearly five million distinct analyses of these specimens, since 1980. CompuChem also has analyzed approximately 750,000 urine samples for the presence of two different drugs, resulting in nearly 1.5 million analyses of these specimens, pursuant to its contract with the military. None of the over six million analyses performed for DOT, the military, and other private and public entities has resulted in a false-positive test result.

In late 1987, a CompuChem clerical worker incorrectly labeled two samples that belonged to DOT employees. Within hours after the test results were questioned by the medical review officer, CompuChem and the medical review officer had identified and corrected the error. CompuChem was not satisfied with its prompt resolution of the error. As stated in its comment to the NPRM, CompuChem has instituted an additional system of review, by CompuChem personnel and computer checks, to ensure that ". . . this one in a million error will not reoccur."

Another drug testing firm, PharmChem Laboratories, has conducted over eight million nonmilitary drug tests nationwide. In its statement to the FAA during the public hearing held in San Francisco on June 9, 1988, PharmChem notes that several courts have determined that the GC/MS confirmation test is "virtually 100 percent accurate, assuming that proper chain-of-custody procedures are followed."

The FAA does not believe that the issue of "passive inhalation" of marijuana smoke will prove to be a significant issue leading to false-positive test results. First, PharmChem's statement indicates

that the DHHS threshold levels that would result in a positive drug test result for the presence of marijuana or marijuana metabolites (to be incorporated completely and without change in the DOT procedures) are set at a level sufficiently high to preclude the possibility of a positive test result based on passive inhalation of marijuana smoke. Second, studies conducted to simulate the conditions that result in passive inhalation have been conducted in artificially-devised and extremely confining areas that were poorly ventilated. Also, in order to obtain a positive test result, testing was conducted immediately after this prolonged and intensive exposure to the marijuana smoke. Based on the FAA's knowledge of these studies, the FAA has concluded that it is highly unlikely that the identical circumstances would be encountered or accurately reproduced outside a laboratory.

Finally, the FAA believes that the safeguards that will be provided in the DOT procedures and by the medical review officer (MRO) review process, which are essentially identical to the DHHS guidelines, will preclude misidentification of food substances or licit drugs that might produce a false-positive test result. The DOT procedures will provide an individual with an opportunity to report any legal or prescription drugs that he or she may be taking at the time of collection of the specimen. The MRO's broad authority to interpret each confirmed positive test result, to evaluate an employee based on the MRO's knowledge of drug abuse disorders, and to verify that a confirmed positive test result is accurate should preclude misidentification of food substances or licit drugs taken in accordance with a valid prescription. In summary, the FAA believes that the two-step testing process, coupled with the DOT procedures, provides a process by which an individual is protected from erroneous false-positive drug test results.

Preemployment Testing

Most organizations and individuals do not object to the concept of preemployment testing. AOPA supports preemployment testing at the discretion of the employer. Operators who hire pilots or crewmembers pursuant to short-term contracts believe that a preemployment test is burdensome if required each time a pilot is rehired pursuant to a new contract. These entities suggest that preemployment tests be given only at the time of training or placement on a bid list for contracts.

Suburban Airlines has required preemployment testing of all flight crew applicants for over a year. Suburban supports 100 percent preemployment testing of the aviation employees proposed in the NPRM. The Director of the Santa Maria Public Airport District also supports preemployment testing and suggests that preemployment testing be implemented immediately.

The Soaring Society of America (SSA) believes that small business employers should have the option of requiring preemployment drug testing as a condition of employment. SSA feels that preemployment testing should be optional because applicants can circumvent detection in a preemployment drug test merely by abstaining from drug use for a short period of time before the preemployment test.

FAA Response. The FAA believes that preemployment testing is a necessary component of an effective anti-drug program. Pursuant to the rule, a preemployment drug test is required only when an applicant has been selected for employment in a sensitive safety- or security-related position with the employer. The preemployment testing provision does not require an employer to test each applicant for a sensitive safety- or security-related position. The rule simply states that an employer may not hire an applicant to perform sensitive safety- or security-related functions unless the applicant has passed a drug test. Therefore, the employer need only test an applicant before actually hiring the applicant for a sensitive safety- or security-related position.

The FAA has revised the proposed rules in ways which should ease the burden on operators who frequently rehire employees pursuant to short-term contracts. The FAA believes that the central issue regarding the frequency of preemployment testing is the continuity of an employee's involvement in an employer's drug testing program. An employer is required to conduct a preemployment test only the first time that an employee is hired pursuant to a contract with that employer so long as the individual remains in the employer's program, even during periods between contracts. The individual, thus, would be subject continuously to drug testing. In addition, so long as an employee is subject to an FAA-approved anti-drug program, another employer may use that employee to perform sensitive safety- or security-related functions. Thus, an individual who participates through a consortium would be able to provide services on a contract basis to multiple employers without having to submit to subsequent preemployment tests or to participate in another employer's drug testing program. If an employee has not been continuously subject to an FAA-approved anti-drug program, an employer would be required to conduct a preemployment drug test.

In the FAA's opinion, it would be permissible for an employer to allow a contract employee to continue in the employer's anti-drug program after termination of a contract. Particularly in the case of an employer who hires employees pursuant to a series of short-term contracts, both the employer and the employee benefit if the employee is continuously subject to a drug testing program. The employer could "rehire" the employee at any time but would not be required to give the employee another preemployment drug test. In addition, the employee could perform sensitive safety- or security-related functions for another employer on a temporary basis but would not be required to participate in another employer's anti-drug program or to submit to another preemployment drug test. To the extent that the employee is not covered by an FAA-approved anti-drug program, an employer would be required to conduct a preemployment drug test before the employee could be hired by a subsequent employer or rehired by a previous employer.

Periodic Testing

AOPA believes that periodic drug testing should not be part of an employer's drug testing program but should only be conducted based on the reasoned judgment of an aviation medical examiner. RAA supports periodic testing during medical certification at least once each calendar year. RAA believes that the employee should bear the cost of the periodic test. Federal Express does not oppose periodic testing but believes that it should be unrelated to the FAA medical examination.

The AMA opposes periodic drug tests as part of a routine medical examination because compliance with collection and chain-of-custody procedures, such as those contained in the DOT procedures and the DHHS guidelines, would be an undue burden on aviation medical examiners.

ATA stated that its association is not convinced that periodic testing effectively deters illicit drug use because of the relative ease with which this test can be circumvented by abstinence. SSA generally does not endorse periodic testing because an employee can avoid detection by relatively short-lived abstinence before any announced periodic test.

FAA Response. The FAA agrees with the commenters that announced periodic testing can be circumvented by an employee's abstinence from drug use. However, periodic testing does enable an employer to identify those employees who are so heavily-dependent on drugs that they are unable to abstain from drug use for even a short period of time prior to a periodic test.

The FAA has modified the periodic testing requirement of the regulation. Under the proposed regulation, an employee who holds a medical certificate would have been required to submit a specimen for drug testing as part of each medical examination required pursuant to Part 67. The revised section makes it clear that an individual is required to submit a specimen for drug testing during the first medical examination of the employee during the calendar year after implementation of the anti-drug program. Therefore, pilots who hold Class I medical certificates, who are required to have periodic medical examinations at 6-month intervals, must be tested only once during one of the medical examinations of the year pursuant to the anti-drug program.

The revised section also states that an employer may discontinue periodic testing after the first year of program implementation when the employer has implemented its random testing program according to the implementation schedule and, therefore, is conducting a significant number of random tests. The periodic testing requirement will ensure that all current employees who hold medical certificates will be tested once during the first year of implementation of an employer's anti-drug program; most of the employees who hold medical certificates also will be subject to random selection for testing during part of the first year of implementation. The majority of random testing programs will be operational after the first year of implementation and periodic testing, which is less effective than random testing, will no longer be a necessary component of an employer's anti-drug program. The FAA anticipates that these revisions will provide maximum drug detection capability and ease the transition to a full random testing program. The FAA considers the revision to be appropriate to relieve some of the significant economic and administrative burdens noted by the commenters who believe that periodic testing is an ineffective and inefficient drug deterrent.

Random Testing

Most individual commenters oppose random testing for a variety of reasons. Among these reasons is the lack of evidence of drug use or abuse in aviation to warrant random testing, invasion of individual privacy, and violation of constitutionally-protected rights.

AOPA opposes random testing primarily on the basis of the unsettled constitutional issues surrounding random testing and the burden imposed by this testing method on law abiding citizens.

AOPA suggests that the FAA delay promulgation of a final rule until the issues raised by random testing are substantially resolved by the Supreme Court in *Railway Labor Executives' Association v. Burnley* and *National Treasury Employees Union v. von Raab* (cited previously). AOPA states that, by awaiting any Supreme Court decision, the FAA could ensure that the final rule is in conformity with guidance enunciated in the Supreme Court's opinion in *Burnley* and *von Raab*. One commenter submitted comments individually, as national litigation counsel for AOPA, and on behalf of the California Aviation Council and the Orange County Aviation Association. This commenter states that the NPRM is an unconstitutional invasion of privacy and a violation of an individual's procedural due process rights. The commenter believes that the NPRM should be withdrawn to await the Supreme Court's impending decisions.

The AMA supported random testing only as part of a comprehensive rehabilitation program. The AMA believes that random testing is not cost effective, is unnecessarily intrusive, and, without confirmation testing, random screening tests are inaccurate.

In addition to soliciting comments on the general concept of random testing, the FAA solicited comments on an appropriate random testing rate of up to 125 percent. Several small business entities, including TEMSCO Helicopters, Inc., Henson Airlines, and Tramco, Inc., oppose the random testing requirement based on the financial and administrative burdens associated with a 125 percent testing rate, transportation of employees to the collection site, and replacement of personnel during testing. TEMSCO Helicopters suggests that a random testing rate of 10 percent will enable the industry to determine if there is a drug problem in aviation without overburdening the industry. RAA also believes that a 125 percent random testing rate is overreaching and unwarranted; however, if the FAA proceeds with a random testing provision, RAA suggests that a 50 percent random testing rate is appropriate. Although Suburban Airlines strongly supports random testing, Suburban believes that a 50 percent random testing rate of the employees proposed in the NPRM would relieve the unjustifiable economic burden on a cost-benefit basis. ERA Aviation, Inc., a Part 121 and Part 135 certificate holder operating more than 12 helicopters and 12 airplanes, believes that unannounced random testing is the most effective deterrent to drug abuse. However, ERA questions a requirement to randomly test 125 percent of the employees on an annual basis. ERA believes that random testing of 25 percent to 50 percent of the affected employee groups, coupled with periodic testing, would provide a sufficient deterrent to drug use if the penalties for positive test results were severe.

NTSB opposes the random testing requirement of the proposed rules. However, if random testing were included in the final rule, the NTSB believes that a relatively high random testing rate would be a more effective deterrent to drug use. The acting Chairman of the NTSB did not concur with the NTSB's position regarding random testing; the acting Chairman supports random testing provided that the random testing rate is sufficiently high to serve as a deterrent to drug use.

ATA, American Airlines, and Delta Airlines support the FAA's mandatory random testing provision because it would provide the maximum deterrent effect to illicit drug use. ATA supports a random testing rate of 50 percent based on review of Department of Defense and private industry drug testing programs. American Airlines also supports the mandatory random testing provision and a 125 percent random testing rate. A consultant to American Airlines on the issue of drug abuse prevention in the workplace, who submitted an affidavit attached to comments by American Airlines, is convinced that random drug testing is "the only powerful and proven means of detecting drug use and drastically reducing drug use and thereafter preventing further drug problems from occurring." On the other hand, Federal Express states that random testing should be permitted, but not mandated, by regulation. Federal Express states that if the FAA ultimately mandates random testing, carriers should be allowed to choose a random testing rate between 15 percent to 50 percent. Federal Express also believes that carriers should be free to set different random testing rates for different groups of employees.

There was almost universal opposition to random testing by unions and organizations representing employees. ALPA, the Transport Workers Union of America (TWU), and the International Brotherhood of Teamsters (Teamsters Union) are adamantly opposed to random testing. ALPA (Council #12) concurs in ALPA's general opposition to random drug testing of professionals in the aviation industry. The Teamsters Union states that a drug testing program is a change in working conditions which, in accordance with Federal labor law, is a mandatory subject of collective bargaining.

SSA does not oppose random testing of employees. However, in order to provide a workable and effective anti-drug program for small business, SSA suggests that entities employing 12 or fewer full-

best copy available

time employees be exempted from the random testing requirement. SSA defines "full-time employees" as those individuals who work for an employer at least 30 hours per week or 5 days per week and have maintained that schedule for at least 90 days.

One commenter, who spoke at the San Francisco public hearing on June 9, 1988, has been a practicing physician for 24 years and has devoted the past seven years to the exclusive practice of aviation medicine. This commenter has worked regularly with EAP representatives and has been involved with ". . . hundreds of airline employees before, during and after treatment for drug and alcohol dependencies." Based on the commenter's extensive experience in drug and alcohol use by aviation employees, he observes that the present system of relying on ". . . peer and supervisory identification, and a highly visible employee assistance program," and on a scheme of "preemployment, for-cause and fitness-for-duty drug testing, enables significantly impaired employees to remain in the workforce." Therefore, this commenter concludes that in order to eliminate those remaining risks, ". . . there is nothing more we can do short of random testing."

FAA Response. While noting the constitutional issues surrounding the issue of random testing discussed previously, the FAA continues to believe that unannounced testing based on random selection is a fundamental component of an effective drug testing program. Unannounced, random testing has proven to be an effective deterrent to drug use and will provide safety benefits to the aviation community by reducing or eliminating drug use by sensitive safety- or security-related aviation personnel. Unannounced, random testing programs initiated by the military, including the Coast Guard, and private industry show declining drug use, evidenced by a decrease in the number of individuals who test positive for drugs, over the course of the drug testing program.

The FAA received many comments regarding the proposed random testing rates. Several commenters suggest a random testing rate of 125 percent because that rate would result in the most significant deterrent to drug use in the aviation industry. However, other commenters who address this issue believe that a 125 percent random testing rate would be excessive and would impose a significant economic burden, particularly on small aviation businesses. The commenters propose a range of random testing rates starting at 10 percent annually. The majority of the commenters suggest that an annual 50 percent random testing rate for the aviation industry is appropriate. These commenters believe that the 50 percent testing rate accomplishes several goals consistent with the intent of the proposal.

In response to the commenters, the FAA has substantially revised the random testing proposal in the NPRM in order to reduce the practical and administrative burdens associated with initiating an unannounced testing program based on random selection of employees. The FAA's approach also is designed to provide a random testing rate that balances cost effectiveness and burdens on employees and employers but still results in an effective and credible deterrent to drug use.

For some employers, particularly those with a large number of employees subject to drug testing, it may be a substantial burden to move from no random drug testing of employees directly to random testing of 50 percent of the covered employees. For example, if required to have tested 50 percent of all covered employees by the end of the first year, employers might have to test at rates far above a 50 percent rate toward the end of the year, to make up for lower rates at the beginning of the year. Employers should be permitted to start the program at a lower testing rate and work up to a 50 percent rate as experience is gained and the testing procedure becomes administratively routine. The FAA does not want to create a situation which might lead to inadvertent mistakes by requiring initial unannounced testing based on random selection at too high a rate.

The final rule, therefore, provides an implementation procedure that would allow employers to phase in unannounced drug testing based on random selection of employees during the first 12 months in which tests are required to be conducted. Employers would not be required to reach an annualized rate of 50 percent until the last test collection of the first year of the program. The total number of unannounced tests based on random selection of employees during the first 12 months of the employer's testing program would have to equal at least 25 percent of the covered employee population. Also, the employer is required to space the tests reasonably throughout the year. This approach will provide a sufficient level of deterrence to drug use and will permit the employer to phase in the 50 percent rate.

Suppose, for example, that an employer has 1000 sensitive safety- or security-related employees. At a 50 percent annual rate, the employer would be required to conduct 500 unannounced tests based on random selection during a year. Under the phased approach, however, the employer could conduct

only a few drug tests at the beginning of the program and then gradually increase the number of tests until, by the end of the first year, the annualized rate of 50 percent was achieved. Thus, if the employer's drug testing plan contemplated administration of unannounced tests based on random selection on 12 occasions during the year, the employer would need to collect 42 urine specimens for analysis (500 divided by 12) on the last occasion, but could collect fewer specimens until then. Overall, the employer would have to collect at least 250 specimens for analysis during the first year. In subsequent years, the employer is required to maintain the 50 percent annualized rate for unannounced testing based on random selection of employees.

The FAA believes that the final rule provides a moderate, but substantial, level of testing based on random selection that enables an employer to increase random testing gradually during the first year of program implementation. During subsequent years of the program, the employer must maintain an annualized rate of 50 percent of the covered employees. In order to determine the appropriate number of employees that must be tested to reach the appropriate "annualized rate" for the random testing program, the employer shall refer to the number of employees subject to the rule at the beginning of a calendar year.

At this time, the FAA believes that this phased program, ultimately reaching a testing level equivalent to 50 percent of the covered employees, will provide a sufficient deterrent to drug use without imposing an undue economic or administrative burden on employers and employees subject to the requirements of the regulation. In addition, the program will produce a sufficient data base at different annualized rates and testing levels for the FAA to analyze the scope of any drug problem in the commercial aviation industry generally or within any particular sector of the commercial aviation community. Analysis of the random drug testing data submitted by an employer will allow the FAA to determine if the random testing program should be revised in any manner.

The phased program and the final 50 percent random testing rate is consistent with the random testing program currently applicable to safety- and security-sensitive employees of the Department of Transportation. DOT's random testing program began in September 1987; the random testing rate has gradually increased and will reach an annualized rate of 50 percent by October of this year. Data from September 1987 to the present show that the current detection rate found as a result of DOT's random drug testing program is 0.83 percent; data from February 1987 to the present show that the current detection rate for FAA and DOT's periodic (e.g., scheduled) testing program is 0.012 percent.

According to the provisions of the final rule, all employers are required to randomly select a sufficient number of employees to enable the employer to conduct unannounced testing of employees who perform sensitive safety- or security-related duties for the employer at the appropriate rate during the calendar year. In order to conduct enough tests to reach the required percentage, an employer may be required to select a number of employees who perform a sensitive safety- or security-related function for unannounced testing that is in excess of the actual number to meet the required percentage. Selection of a greater number of employees enables the employer to reach the appropriate annualized rate despite absences due to vacations and medical leave or absences due to an inability to reach a collection site resulting from travel or duty requirements.

If a consortium has been established among employers or operators, the consortium would be required to select and to test the appropriate rate of the aggregate total of employees subject to the final rule who are covered by the consortium. The testing rate of the consortium will be attributed to each employer participating in the consortium. In the FAA's opinion, the consortium's testing rate can be attributed to each participating employer, although less than the appropriate percentage of the employees of a particular employer have been tested during a calendar year, without significantly decreasing the deterrent effect of a random testing program. An employer or consortium that develops a random selection scheme involving preliminary selection criteria, such as geographical zones, must specify these schemes or variations in the employer's anti-drug plan. The FAA realizes that these variations may provide administrative ease for an employer. However, the FAA must review these variations to ensure that the scheme does not dilute the required annualized rate required by the final rule.

The FAA received comments from small aviation businesses regarding the difficulty of testing a large number of employees on a random basis during the first year of implementation of the rule. In response to these comments, the FAA substantially revised the provisions of the propose rule. Certain Part 135 certificate holders whose total workforce includes 11 to 50 sensitive safety- or security-related

employees are given additional time to submit a random testing plan and to ensure that the appropriate percentage of the sensitive safety- and security-related employees are subject to unannounced drug testing on a random selection basis during a calendar year.

The FAA encourages these employers to develop a comprehensive random testing plan as soon as possible. As discussed later, Part 135 certificate holders that employ 10 or fewer covered employees and those individuals or entities listed in § 135.1(b), who are otherwise exempt from the requirements of Part 135 but are included in the final rule because they are engaged in operations for compensation or hire, are given additional time to develop and implement an anti-drug program that includes random testing. The FAA notes that the final rule does not restrict the ability of these employers to submit a random testing program, and to implement that program, earlier than the timeframes contained in the final rule.

Some commenters address the issue of the difficulty in developing an efficient and successful random testing program. The FAA notes that the rule provides flexibility to an employer to begin the random testing program at a lower random testing rate so long as the required percentage of covered employees have been selected on a random basis and have been tested by the end of the first year after approval of the employer's anti-drug program or random testing plan. For example, an employer may test small increments of employees at the beginning of a period and may test a large percentage of employees at the end of the same period to achieve the annualized rate that is required by the final rule.

Postaccident Testing

AOPA supports postaccident testing if it is conducted by the NTSB. AOPA believes that postaccident testing should not be a part of an employer's drug testing program and should not be conducted by the FAA.

The NTSB comments that the 24-hour period provided for postaccident testing is excessive. The NTSB recommends that the FAA specify a maximum period of four hours for collection of a postaccident drug test and provide an appropriate penalty for failure to collect the specimen within the 4-hour period. The NTSB believes that delays of more than four hours in sample collection impair detection of a drug and its "psychoactive component(s)" in blood samples, particularly substances such as cocaine, marijuana metabolites, some amphetamines, and phencyclidine (PCP). The NTSB also suggests that blood testing is the preferable method for postaccident testing and suggests that the FAA permit this method of testing for the presence of drugs after an accident. ATA also suggests that postaccident testing should be conducted within 4 hours after an accident and, in no case, later than 12 hours after an accident.

ATA recommended that the NTSB's definition of "incident" should be added to the postaccident testing provision to cover situations when an aircraft is empty or when personal injury or physical damage is less severe than specified in the postaccident testing provision. ATA also believes that postaccident testing should be conducted unless a supervisor determines that an employee's drug use was not a contributing factor in the accident. FEIA believes that postaccident testing is "wasteful and intrusive" unless the accident clearly is caused by the person to be tested and there is individualized probable cause to believe that the employee was impaired at the time of the accident.

SSA does not completely endorse postaccident testing based on a variety of practical considerations that SSA believes are unresolved in the regulation as proposed. However, SSA states that postaccident testing, after an NTSB-defined accident, of any employee working for a small business should be conducted as deemed feasible by the employer. SSA believes that postaccident testing should be conducted within 24 hours if the employer determines that testing is feasible and appropriate. Also, if the employer determines that testing is not feasible, the FAA may request an explanation from the employer during the routine investigation of the accident.

FAA Response. In the NPRM, the FAA proposed that postaccident tests be conducted within 24 hours after an accident based on the possibility that difficulties may arise after an accident in transporting an individual to a collection site or bringing a drug testing kit to the scene of the accident. The FAA is aware that extended delays in sample collection and testing after an accident may result in deterioration or elimination of a drug or a drug metabolite from a person's system. Recognizing these difficulties and concerns, the FAA has modified the postaccident testing provision. Under the final rule, an employer must conduct postaccident testing of an employee as soon as possible after the accident but in no case later than 32 hours after the accident. Selection of this time period comports with the DOT's postaccident drug testing program for DOT employees, which provides a maximum of 8 hours to determine if an employee is required to be tested and an additional 24 hours to actually obtain the sample for testing.

The FAA strongly encourages employers to promptly determine if an employee is subject to postaccident testing, particularly in cases where there is little or no uncertainty that an employee's performance was a contributing factor in the accident. The FAA intends to vigorously enforce the regulation where there is unreasonable delay in determining whether an employee should be tested under this provision or where there is unreasonable delay in testing after the determination to test is made. Although several commenters who address the issue suggest time periods of less than 24 hours, it is the FAA's opinion that a maximum period of 32 hours is a workable and reasonable accommodation that is appropriate for the aviation industry.

The NTSB's suggestion that the FAA require an employer to conduct postaccident testing within four hours after an accident is based on the time-sensitive nature of toxicological testing of blood samples. On the other hand, urinalysis testing does not involve the extreme time-critical considerations associated with collection and testing of blood samples. In the FAA's opinion, postaccident urinalysis testing is sufficient at this time to provide an indication of an individual's drug use that may have been a causal factor in an aviation accident.

Also, the FAA proposed only urine testing in the NPRM, specifically excluding blood testing as an option, for all drug tests that would be conducted under the anti-drug program. Therefore, the FAA considers the NTSB's suggestion to be beyond the scope of the notice and the FAA has not adopted NTSB's suggestion to permit postaccident testing by collecting a blood sample. In the aviation context, the significant proportion of serious accidents involving fatalities to crewmembers provides data with respect to drug involvement in those accidents. In the FAA's judgment, extending full toxicological testing to surviving crewmembers is not warranted at this time.

Presently, the FAA is not convinced that including the NTSB's definition of "incident" as a trigger for drug testing is warranted. As discussed below, the FAA believes that the revisions to the section providing for testing based on reasonable cause will adequately address circumstances that might qualify as "incidents." The current provisions allow sufficient, but limited, latitude to an employer to determine whether an employee should be tested following an incident or an accident not covered by the NTSB's definition of accident.

Although several commenters suggest that the FAA expand the scope of the postaccident testing provision, the FAA believes that the postaccident testing provision, limiting testing to only those employees whose performance may have been a cause of the accident, is appropriate. The FAA believes that it is inappropriate to require postaccident testing of an employee whose performance could not have been a cause of the accident merely because that employee happens to have been onboard or involved with an aircraft involved in an accident.

Testing based on Reasonable Cause

The NTSB suggested that the FAA include "incidents," as defined by the NTSB's rules, as events that would trigger reasonable cause testing. RAA agrees with the requirement that two supervisors, one with training in the symptoms of drug abuse, must concur in the decision to test an employee based on reasonable suspicion of drug use. RAA believes that each carrier should determine the conditions which constitute reasonable suspicion. FEIA also believes that two supervisors, trained to detect symptoms of drug abuse, must concur in all decisions to test based on probable cause. ATA suggests that only one supervisor be required to trigger testing of an employee based on reasonable cause. In addition, ATA states that supervisors should not be required to have specialized training for the purpose of determining when reasonable cause exists to test an employee.

Tramco, Inc. believes that the proposed circumstances that would support a decision to test based on reasonable cause are too restrictive. Tramco believes that an employee's attendance patterns, tips from coworkers, "error rates," and other indirectly observable indications should also trigger testing based on reasonable cause. Tramco currently uses these triggers in its drug testing program; Tramco believes that the FAA's criteria will not result in detection of possible drug users because it is limited to physical and observable indices of gross impairment. SSA supports "for-cause" testing, as the employer deems necessary and feasible, if testing is conducted pursuant to the DHHS guidelines.

IAM and TWU believe that the criteria that would trigger testing based on reasonable cause are ill-defined. These organizations believe that testing based on reasonable cause will be a tool for employee harassment; these organizations suggest that supervisory personnel should be trained to recognize the symptoms of drug impairment or that at least one of the supervisors making the determination

to test should be someone other than the employee's immediate supervisor. The Teamsters Union and IAM believe that decisions and determinations related to testing based on reasonable cause should be documented and supported in a written report.

The Newton Psychological Centre submitted a "basic identification profile," developed to aid supervisors of the Philadelphia Electric Company in identification of employees who may not be fit for duty. The profile is used to detect early warning signs of problems based on medical or psychological problems. The profile sets forth behavioral, emotional, physical, biological, and cognitive cues related to the use of marijuana, cocaine, alcohol, barbiturates, amphetamines, and heroin, or cues related to anxiety or depression. The company's policies regarding alcohol and substance abuse, job performance warning signs, and counseling and confrontation guidelines are printed on the profile.

FAA Response. As stated in the FAA's response to comments submitted on the postaccident testing provision, the FAA is not including a "postincident" testing provision at this time. However, the circumstances under which a supervisor could require an employee to submit to a test based on reasonable cause have been modified in the final rule. Based on the comments submitted, particularly by employers who have existing "reasonable cause" testing programs, the FAA has expanded the list of circumstances that might trigger testing under this provision. Evidence of repeated errors on the job, regulatory or company rule violations, or unsatisfactory time and attendance patterns, if coupled with a specific, contemporaneous event that indicates probable drug use, could provide additional, cumulative evidence to support a decision to test an employee based on reasonable cause.

As proposed in the NPRM, an employer is permitted to test a specimen provided by an employee, collected pursuant to a reasonable cause determination, for the presence of any drug or drug metabolite listed in Schedule I or Schedule II of the Controlled Substances Act. The employer may test for these drugs, as part of the employer's approved anti-drug program, if the employer has specific approval from the FAA to include these controlled substances in the employer anti-drug program. In addition, the testing for these additional drugs must be conducted in accordance with the DOT procedures to be codified in 49 CFR Part 40.

The FAA believes that the provision requiring two supervisors, one of whom has specialized training in detecting the symptoms of drug use, to concur in the decision to test an employee based on reasonable cause is appropriate for large companies. However, the FAA has revised this section of the rule in order to address the legitimate concerns of small employers, many of whom do not have more than one supervisor employed at the company. For companies that employ 50 or fewer employees who perform a sensitive safety- or security-related function, the rule specifies that only one supervisor is required to make the determination that would trigger testing of an employee based on reasonable cause. The FAA also has clarified the annual EAP training requirements for supervisors to make it clear that supervisors who make reasonable cause determinations must have specific training that will enable them to assess and demonstrate the basis for testing based on reasonable cause.

Testing after Return to Duty

ATA believes that the FAA should not set regulatory standards governing postrehabilitation testing. ATA, other employer and employee organizations, and many individual commenters believe that a schedule for postrehabilitation testing should be made by management in consultation with persons involved in an employee's rehabilitation program. In order to ensure continued disassociation from drugs, RAA supports a requirement for monthly screening, for 12 months, after an employee has completed rehabilitation.

APFA believes that a schedule for postrehabilitation testing should be determined by an employee's EAP counselor and should be limited to a reasonable period of no more than one year. AFA states that decisions regarding testing after rehabilitation should be the responsibility of the individual treatment facility used by the employee.

FAA Response. The FAA agrees with the commenters that suggest that unannounced testing during any rehabilitation and before an employee returns to duty should be determined by the persons involved in the employee's rehabilitation program. Decisions regarding the frequency of testing during any rehabilitation program appropriately lie with those individuals who are familiar with and involved in any employee rehabilitation program.

However, unannounced testing after an employee returns to duty is critical to ensure an employee's continued disassociation from drugs. The FAA believes that it is essential to require unannounced

testing of employees who have returned to duty in a sensitive safety- or security-related position for an employer after failing a drug test given by an employer or after refusing to submit to a drug test required by the final rule. This type of testing is the most effective means of ensuring that an employee remains drug free while performing commercial aviation duties. Moreover, once an employee has returned to duty, the FAA and the employer have a substantial interest in requiring that employee to be drug free while performing sensitive safety- or security-related duties in commercial aviation. Therefore, the FAA has included a provision in the rule requiring an employer to monitor an employee who has returned to duty by providing unannounced drug testing, pursuant to a schedule determined by the MRO, for not more than 60 months after the employee has returned to duty.

The rule also provides that an employer must conduct unannounced testing of an individual who is hired to perform a sensitive safety- or security-related function after failing a drug test or after refusing to submit to a drug test for another employer and who has not previously been subject to return-to-duty testing. This section of the final rule addresses situations where an individual fails a drug test or refuses to submit to a drug test but does not return to duty for an employer. In this case, any subsequent employer would be required to test an individual for not more than 60 months after the individual is hired to ensure that the individual is drug free. In the FAA's opinion, if an employee failed a drug test given by a previous employer but returned to duty with that employer in accordance with the requirements of this final rule, a subsequent employer would not be required to reevaluate a prior employer's return-to-duty decision. An employer would be required to test this individual prior to employment but would not be required to monitor the employee after the employee was hired. Pursuant to the final rule, the medical review officer (MRO) has the discretion to determine the appropriate level of unannounced testing for an individual or an employee. The FAA believes that it is appropriate to allow the MRO to tailor the frequency of this type of testing to adequately address differences between individuals, the level and type of drug use, and any treatment or counseling program.

The FAA notes that the MRO also is required to ensure that an employee has been tested for drugs, in accordance with the procedures in the final rule and the DOT procedures, before being hired or returning to duty. In most cases, the MRO will not be required to arrange testing for an employee because the employee will have taken a drug test as part of any employee rehabilitation program. However, the MRO must ensure that an individual or employee has been tested, in accordance with the procedures of Appendix I to Part 121 and the DOT procedures, before the MRO can make a recommendation that an individual be hired or that an employee be returned to duty after failing a drug test or after refusing to submit to a drug test. In the FAA's opinion, a preemployment drug test would suffice to satisfy this requirement of the final rule.

Employee Assistance Programs and Rehabilitation

The FAA sought comment in the NPRM regarding three different EAP options. These options specified the circumstances under which an employee would be given the opportunity to seek rehabilitation. Option 1 would allow all employees to seek an opportunity for rehabilitation regardless of how the employee's drug use was detected. Option 2 would allow most employees, except those employees whose drug use was detected as a result of postaccident testing or testing based on reasonable cause, to seek an opportunity for rehabilitation. Option 3 would only allow employees who volunteer to seek rehabilitation and would exclude all employees whose drug use was detected by any other means. Under all three options, an employer would not be required to offer an opportunity for rehabilitation or to provide job security to any employee who was identified as a drug user on the job.

Employer organizations tend to support the third option proposed in the NPRM regarding rehabilitation and reemployment or job security opportunities that should be offered to employees. Part 121 certificate holders, as generally noted by ATA, support the third option. For example, Delta Airlines believes that the most effective deterrent to drug use is the threat of losing a job. On that basis, Delta states that mandatory rehabilitation and an opportunity for continued employment would diminish the effectiveness of the rule. American Airlines disagrees with ATA's position and supports the first option. Federal Express supports the third option if the FAA mandates rehabilitation. The Helicopter Association International (HAI) states that requiring an employer-sponsored rehabilitation program whenever required testing of an employee produces a positive drug test result places an unwarranted burden on the employer. HAI believes that an employer should have the right to dismiss an employee if any drug test conducted during employment produces a positive test result. HAI states that the employer should have the ability to decide which employees, based on the "value" of the employee to the organization, would be offered an opportunity for rehabilitation.

Small Part 135 certificate holders generally state that an employer should have the right to fire any employee who uses drugs and feel that an opportunity for rehabilitation should not be offered to any employee who uses drugs. These small employers base their position on the potential liability to the company of rehiring a known drug user, the expense to the company of holding the employee's job open, or replacing an employee on a temporary basis, during rehabilitation.

The AMA reaffirmed its long-standing support of employment-based treatment and assistance programs for employees with alcohol or drug problems. The AMA believes that the FAA should require an employer to provide one opportunity for rehabilitation to any employee who voluntarily enrolls in an EAP and to any employee who is identified as a drug user through testing.

NTSB generally concurred in the concept of requiring an employer to provide EAP services to employees. The NTSB recommended that employers be required to offer one opportunity for rehabilitation to employees who volunteer for an EAP and for employees who are identified as drug users through any type of drug testing.

Most small business entities, TEMSCO Helicopters, Inc. and Overseas Air Transport Corporation for example, object to a regulatory provision that would require an employer to provide job security to an individual enrolled in rehabilitation. This objection is based on the financial burden of keeping a job open for an employee who is unable to perform his or her duties and the elimination of an employer's discretion to fire an employee who uses drugs. RAA believes that an employee who has successfully completed rehabilitation, as determined by the head of the rehabilitation program and airline management, should be offered an opportunity to return to duty. Executive Air Fleet (EAF), a Part 135 certificate holder with 200 employees subject to testing, would support job security for an employee who voluntarily sought rehabilitation and who had three to five years of service with the company. SSA also believes that an employee's length of employment may be a reasonable factor to consider when specifying an employer's obligation to retain or rehire an employee participating in rehabilitation. SSA also states that holding an employee's job open during inpatient rehabilitation will greatly complicate small business operations for an unknown time period. Henson Airlines states that, under its existing program, employees will be fired as a result of a positive alcohol or drug test. ERA Aviation, Inc. strongly objects to any Federally-mandated rehabilitation and rehire requirement. ERA Aviation objects to the cost of providing EAP services, but more important, objects to assuming the potential liability problems that could result from rehiring a known user of illegal substances even if that employee has successfully completed a rehabilitation program.

Several small operators, including TEMSCO Helicopters, Inc., object to the requirement to provide an opportunity for rehabilitation to employees identified as drug users. Henson Airlines provides an opportunity for rehabilitation only to employees who voluntarily enroll in rehabilitation. RAA supports these views. Organizations such as the American Association of Airport Executives (AAAE) and ATA believe that an opportunity for rehabilitation and subsequent reemployment should be offered only to employees who volunteer for rehabilitation. SSA states that there should be no requirement that a small business retain or rehire any employee who tests positive for drugs as a result of any unplanned drug test, including postaccident or for-cause testing. ATA believes that limiting rehabilitation and reemployment to volunteers has the dual effect of making safety the industry's highest priority and containing the costs associated with rehabilitation. AAAE believes that any employee who tests positive for drugs should be dismissed immediately. AAAE comments that employers and employees should be free to negotiate broader rehabilitation and reemployment rights as part of a collective bargaining agreement.

Labor organizations are strong supporters of broad EAP opportunities and services. TWU and FEIA believe that all employees who test positive, regardless of the reason for testing, should be given at least one opportunity for rehabilitation. FEIA supports the requirement for at least one rehabilitation opportunity because a positive drug test is not proof of impairment on the job. The Teamsters Union believes that negotiated, client-specific rehabilitation programs should be available to employees who volunteer and for employees who test positive on one occasion. Labor organizations comment that all rehabilitation costs should be paid by the employer either directly or as part of an employee benefit or insurance package. TWU concurs with this position, insofar as it relates to the first positive test result, unless the employee has engaged in conduct that would otherwise justify suspension or discharge under an applicable collective bargaining agreement.

ALPA states that there is no valid reason to limit access to an EAP only to employees who volunteer for rehabilitation. Based on experience in the HIMS program, only 15 percent of the pilots treated for alcoholism were self-referred; 85 percent of the pilots were discovered by the union or management, or both. ALPA believes that rehabilitation should be made broadly available to any employee who could benefit from an EAP and that, in some cases, a second opportunity for rehabilitation may be appropriate. ALPA urges the FAA to revise the proposed regulation to require employers to pay the cost of rehabilitation programs that are mandated by the regulation.

ALPA believes that traditional EAP techniques that are tailored to a specific population, such as the HIMS program, will be more effective in deterring drug use than the anti-drug program proposed in the NPRM. During the 15-year period that the HIMS program has been in effect, 800 pilots have participated in rehabilitation for alcoholism yielding a long-term success rate of 93 percent. ALPA states that the average "off line time" for pilots involved in the HIMS program is approximately 120 days: 30 days for treatment; 30 days for aftercare treatment, observation, and processing; and 45 to 60 days for processing of an FAA application. The recovery rate for pilots who participate in one rehabilitation opportunity is 85 percent. Of the 15 percent of the pilots who suffer a relapse after the first treatment, approximately 50 percent are successfully treated in their second rehabilitation opportunity.

FAA Response. Most comments regarding rehabilitation deal with the issue of whether, and under what circumstances, to offer rehabilitation and to provide job security to an employee and the length of any employee rehabilitation period. The FAA carefully considered the various arguments submitted by the commenters on the issue of EAP services and rehabilitation opportunities for employees. The FAA understands, and considered, the arguments raised in defense of broad rehabilitation opportunities and job security for aviation personnel who use drugs.

However, the FAA reviewed the two options that included provisions providing broad rehabilitation opportunities and job security to employees whose drug use was detected through testing under the final rule. Many of the commenters oppose rehabilitation opportunities and job security for employees who fail to discontinue drug use and wait to be detected by testing. The FAA agrees with these commenters and believes that a strong message must be conveyed to drug users that the use of drugs is unacceptable in the aviation industry. The FAA's primary duty, pursuant to statutory mandate, is to consider the adverse safety consequences surrounding the issue of drug use by sensitive safety- and security-related aviation personnel. On this basis, the FAA has determined that employers should not be obligated to offer an opportunity for rehabilitation or to provide job security to employees who fail a drug test or who use drugs on the job. The FAA understands that broad rehabilitation opportunities and job security for employees, without regard to the manner of detection of drug use, may help those employees who are unable to help themselves. But, the FAA believes that it is inconsistent with the agency's safety responsibilities to promote the message that drug use in the aviation industry will be tolerated until an individual's drug use is detected through testing. The FAA believes that it is inappropriate to place the agency and an employer in the anomalous position of allowing any employee who uses illegal drugs to work in a sensitive safety- or security-related position and whose drug use may adversely affect aviation safety. Rather, the FAA believes that it is appropriate and consistent with its statutory safety mandate to prohibit an employee who fails a drug test, who refuses to submit to a drug test, or who uses drugs on the job from acting in a sensitive safety- or security-related position. The FAA is convinced that the comprehensive testing program of sensitive safety- and security-related employees, combined with an employee assistance program to educate and train all personnel, is consistent with the statutory duty to promote aviation safety and will reduce any drug use in the aviation community.

The FAA also carefully reviewed the third option presented in the NPRM that would provide an opportunity for rehabilitation and job security to an employee who admitted his or her drug use and who volunteered for rehabilitation before being detected through drug testing. However, in the FAA's opinion and as noted by the commenters, there are several issues related to employee rehabilitation and retention or reemployment benefits that must be considered in development of the final rule.

For example, the term "rehabilitation" generally means the period of time during which an employee is receiving treatment or counseling for a drug problem. The length of any rehabilitation period is dependent on several factors such as the availability and enrollment period of rehabilitation services, the length and extent of treatment for the level of use and the type of drug used, collection and analysis

of tests given during rehabilitation, and the review process that may lead to a recommendation to return to duty in a sensitive safety- or security-related position. The term "rehabilitated" generally means that an employee is determined to be drug free and, based on the employee's progress and prognosis during rehabilitation, the employee may return to work. The fact that an employee has returned to work does not mean that the employee is exempt from follow-up or aftercare treatment and counseling.

The FAA is aware of the wide variety of rehabilitation programs that vary both in the length of treatment and type of treatment depending on the substance used and the availability of rehabilitation and treatment services. One standard rehabilitation and treatment program, generally necessary for those individuals who require intensive inpatient care followed by outpatient care and counseling sessions, specifies 28 days of inpatient care. Other programs may involve shorter periods of time for inpatient care, may involve outpatient treatment only, or may involve a combination of inpatient and outpatient care of varied duration. For example, some treatment programs may require three to four sessions, given on two or three nights a week, over a six to eight week period and followed by less frequent meetings or counseling sessions. Other treatment programs might involve individual or group counseling sessions on a weekly basis, over a period of one year or more. An additional factor that affects the length of treatment or rehabilitation is the availability of private or community services in a particular area.

The FAA reviewed these variables to determine if a timeframe for voluntary rehabilitation and job security could be developed and included in the final rule. The FAA carefully considered the comments from many aviation businesses that oppose any regulatory requirement to offer rehabilitation and to retain or rehire any employee who admits to illegal drug use. The commenters base their objections on several factors including elimination of an employer's discretion to terminate an employee; undue complication of operations due to potential extended absences of employees enrolled in rehabilitation; and negation of an employer's ability to tailor rehabilitation opportunities and job security to a particular employee population. The most strenuous objections are based on the substantial and unwarranted burdens, both administrative and financial, associated with rehabilitation and job security for employees. Based on financial information submitted by the commenters, it appears that expenses of rehabilitation and job security opportunities as proposed would seriously affect large aviation entities and would probably overwhelm small companies.

After review of the considerable variables in treatment and the extensive arguments presented by the commenters, the FAA concluded that a reasonable accommodation of burdens on employers who may not be able to absorb employee absences and realistic opportunities for employee rehabilitation can not be imposed in the abstract. Thus, the FAA does not agree with the commenters who state that the FAA should specify an opportunity for rehabilitation and the amount of time during which an employer is required to provide job security for an employee enrolled in rehabilitation.

Many employers in the aviation industry currently offer rehabilitation opportunities and job security benefits to employees. The FAA anticipates that those employers will continue to offer these opportunities and benefits to employees and that other employers may elect to include these components in any negotiated employee benefit package. Because many aviation entities have resolved the relative administrative, personnel, operational, and financial issues that surround employee rehabilitation and job security requirements, the FAA believes that the aviation industry is able to design appropriate programs and services for its employees. The FAA believes that, in light of the variables and burdens addressed above, issues regarding an adequate amount of time for rehabilitation, an appropriate amount of time to receive a recommendation to return to duty in a sensitive safety- or security-related position, and job security matters, are best addressed in the specific employment context.

Thus, an employer is not required to offer an opportunity for rehabilitation, to provide job security, or to provide the resources for rehabilitation to any employee. At the same time, employers may offer these opportunities and benefits to employees; the FAA urges employers to consider the experience of employers who have developed rehabilitation programs.

The final rule does not prohibit an employer from reassigning an employee to a position that does not involve the performance of sensitive safety- or security-related duties. The final rule also does not dictate whether an employee is required or permitted to use vacation time, sick leave, or leave without pay in order to accommodate the employee's time away from his or her sensitive safety- or security-related position. The FAA believes that issues such as termination, reassignment, hiring of

temporary employees to fill a position, or policies regarding an employee's absence from a position, are issues that are appropriately the subject of employer and employee negotiation or collective bargaining.

The NPRM did not propose to require an employer to pay for an employee's rehabilitation and final rule also does not address this issue. Indeed, since an employer is permitted to terminate an employee who fails a drug test or who refuses to submit to a drug test, and such employee does not have a right to return to duty for that employer, this issue is not relevant to the final rule. However, the employer may cover an employee's rehabilitation expenses through an employee benefit package, insurance coverage, or as a matter of collective bargaining negotiated between the employer and the employee. The FAA considers these areas to be a matter between employers and employees and, as such, are left to the discretion of the employer or to be negotiated during collective bargaining.

EAP Education and Training Programs

ATA states that the FAA should not specify the details and contents of an employer's EAP. The Teamsters Union believes EAP services should be negotiated between labor and management and that rehabilitation programs should be client-specific. ALPA believes that EAP services should be tailored to the specific employee population as the HIMS program is tailored to pilots in commercial aviation.

Various labor organizations conclude that EAPs, instead of mandatory testing, are the preferable method to conduct an anti-drug program. AFA also urges the FAA to separate the administration of any drug testing programs, if mandated at all, from administration of an EAP.

The FAA received considerable data in response to the ANPRM and the NPRM regarding the availability of EAP services. Some of these commenters included specific, existing EAPs that are recommended by the industry. The Association of Labor-Management Administrators and Consultants on Alcoholism, Inc., (ALMACA) submitted an extensive, recommended industry EAP in response to the ANPRM.

Although most commenters think that EAPs are valuable, employer and employee organizations differ on the mechanics and content of an EAP education and training component. Labor unions generally favor broad EAP services. The majority of employer organizations favor EAPs that are designed to meet the specific needs of the company and oppose regulatory action by the FAA in this area.

FAA Response. The FAA believes that an employer should have the ability to design an EAP that would best serve its employees. The ability to tailor an EAP is particularly important for small aviation employers who may not have the financial and administrative resources to support a company-sponsored EAP. Therefore, the FAA has made no changes to the proposed minimal EAP education requirements. However, the FAA has revised the EAP training requirements. The FAA deleted the minimum requirement of 60 minutes of annual training for all employees. The FAA retained the 60-minute training requirement for supervisors who will make determinations to test an employee based on reasonable cause. The FAA believes that it is appropriate to require a full 60 minutes of initial training for presently-employed and newly-hired supervisors making reasonable cause determinations because of the need for increased awareness and recognition of signs that may indicate drug use. The employer has the discretion to determine the reasonable recurrent training for supervisory personnel who have the authority to make reasonable cause determinations. The FAA believes that this flexibility will enable employers to address specific issues or needs that may arise as a result of the employer's anti-drug program.

The rule permits an employer to develop and provide these minimum services as part of an internal program or the employer may contract with community agencies or other aviation companies to provide these services to employees. The employer is permitted to provide additional education and training, beyond the minimum requirements of the rule, to its employees. The FAA believes that employers will not have substantial difficulty developing education and training programs for employees because of the significant number of model EAPs submitted to the FAA in response to the ANPRM.

Small Aviation Entities and Businesses

The National Air Transport Association (NATA) represents numerous Part 135 certificate holders in the aviation industry. NATA states that the anti-drug program would have significant cost impact on Part 135 certificate holders and, particularly, small aviation operators. NATA recommends that

Part 135 certificate holders, with 100 or fewer covered employees should be excluded from the requirement to submit and implement an anti-drug program. A number of other small Part 135 certificate holders responding to the NPRM also argue for exclusion from the anti-drug program.

AOPA urges the FAA to exempt from the rule operators and their employees who currently are exempt from the requirements of Part 135. AOPA contends that these operators are invariably small businesses who would be unable to withstand the financial and administrative burdens of the proposed regulations. Several commenters involved in single pilot—single aircraft operations noted the difficulty of complying with most of the provisions of the proposed rules.

Atlantic Aero, Inc., a fixed base operation employing more than 100 people, and Sunwest Aviation support efforts to address the drug problem but state that modifications to the proposal are necessary to avoid an unjustified administrative and financial burden on small operators.

SSA feels that the proposed anti-drug program is inappropriate for small businesses that rely on student instruction as the economic base of activities or for certified flight instructors acting as independent contractors. SSA believes that the FAA has failed to account for the practical differences between large corporate entities and small businesses. SSA suggests that the FAA develop four separate anti-drug programs that would address the particular needs and concerns of Part 121 certificate holders, Part 135 certificate holders, flight schools, and small businesses or independent contractors.

A commenter speaking as national litigation counsel for AOPA and on behalf of the California Aviation Council and the Orange County Aviation Association, conveys the concerns of flight instructors, small fixed base operators, banner towers, crop dusters, and other small aviation entities that do not provide scheduled air carrier service who are affected by the proposal. This commenter notes that the NPRM is an unwarranted, overreaching invasion of the domestic aviation community's right to be free from governmental intrusion because of the lack of evidence of any drug problem among commercial aviation professionals. The commenter states that this lack of evidence supports the history of responsible self-regulation by the commercial aviation community.

The National Association of Flight Instructors (NAFI) states that the anti-drug program proposed in the NPRM is tailored for a large aviation organization and, therefore, is not appropriate for a small organization or a freelance flight instructor that is not employed by any company. NAFI believes that testing of a flight instructor each time that instructor performs flight instruction duties will be impossible. In addition, NAFI is concerned about the quality and reliability of laboratory analysis; the constitutionality of drug testing; and the administrative and economic burden on small entities related to EAP services, MRO requirements, and job security for employees enrolled in rehabilitation. Two individual commenters believe that sole-proprietorships and businesses that employ 10 or fewer employees should be excluded from any requirement to implement an anti-drug program.

FAA Response. The FAA understands the economic and practical concerns expressed by Part 135 certificate holders as well as those entities or individuals, listed in § 135.1(b), who are otherwise exempt from the requirements of Part 135 but are affected by the regulation because they are engaged in operations for compensation or hire. For the purposes of the requirements of the anti-drug program, the FAA has tailored the final rule in an attempt to accommodate small aviation entities, particularly those Part 135 certificate holders who employ 50 or fewer employees who are covered by this final rule and those entities or individuals, listed in § 135.1(b), who are otherwise exempt from the requirements of Part 135 but are included in the comprehensive anti-drug program because they conduct operations for compensation or hire.

The FAA believes that it would be counterproductive to the goals of the anti-drug program to impose requirements on small aviation entities who would be unable to comply with them because of substantial financial, administrative, and logistical difficulties. The vast majority of the difficulties are associated with the requirements of implementing a random testing program and providing rehabilitation programs and services to employees. Therefore, the FAA has revised the proposed rule to provide a tiered implementation plan that would allow small aviation entities to develop and implement a comprehensive anti-drug program, over specific time periods, in accordance with a schedule determined by the FAA. The language of the rule does not prohibit an employer from implementing its anti-drug program sooner than required by the FAA's schedule if the employer is able to comply with the rule requirements and the provisions of its anti-drug program at an earlier date.

Part 121 certificate holders and Part 135 certificate holders that have more than 50 covered employees, and contractors to these certificate holders, will be required to follow the schedule that

was proposed in the NPRM with one exception. As proposed, these employers must submit an anti-drug plan to the FAA not later than 120 days after the effective date of the rule and must implement the anti-drug program not later than 180 days after approval of the anti-drug program by the FAA. However, these employers are required to implement preemployment testing of applicants for sensitive safety- or security-related positions not later than 10 days after approval of the employer's anti-drug plan by the FAA. The FAA believes that it is appropriate to require accelerated implementation of preemployment testing for these employers because many of these employers have existing preemployment testing programs and, generally, these employers have the available financial and administrative resources that enable them to begin testing.

Part 135 certificate holders that have 11 to 50 covered employees, and contractors to those certificate holders, will be required to submit an interim anti-drug program, that sets forth all required drug testing except mandatory random drug testing, not later than 180 days after the effective date of the final rule. The employer must implement preemployment testing, periodic testing, postaccident testing, testing based on reasonable cause, and testing after an employee's return to duty not later than 180 days after approval of the anti-drug program by the FAA. These employers must submit an amendment of their interim anti-drug program to the FAA, that contains the procedures for implementing an unannounced testing program of employees who are randomly selected at the applicable annualized testing rate, not later than 120 days after approval of the interim anti-drug program by the FAA. The employer must continue implementation of the remainder of the program and must implement the random testing provision not later than 180 days after approval of the amended anti-drug program by the FAA.

Part 135 certificate holders with 10 or fewer covered employees and those entities or individuals, listed in § 135.1(b), who are otherwise exempt from the requirements of Part 135 but are included in the comprehensive anti-drug program because they conduct operations for compensation or hire, and any contractors to these employers, must submit an anti-drug plan to the FAA for approval, that includes procedures for all types of testing mandated by the rule, not later than 360 days after the effective date of the final rule. These employers must implement the approved anti-drug program not later than 180 days after approval of the plan by the FAA. The FAA believes that this extension of time will enable small aviation entities to evaluate random drug testing programs of other companies, to develop an appropriate method by which to comply with the drug testing provisions of the rule, and to participate in any association or consortium that may be available to provide specimen collection, testing assistance, and EAP services. Also, the FAA believes that it is appropriate to require these employers to submit a plan that includes random testing, as opposed to implementation of random testing after other testing is implemented, because these employers will have a significant amount of time to develop and implement a comprehensive anti-drug program for their employees.

New aviation businesses that come into existence after the effective date of the rule, and that are subject to the requirements of the final rule, will be required to comply with the schedule that is appropriate for the size of the company and their particular operations. The FAA believes that it is appropriate to adhere to the same time schedules that are set forth for existing aviation entities in order to treat similarly-situated entities in a similar manner. However, it is possible that the timeframes may be accelerated for new businesses in the future as existing employer programs and consortia develop and continue to provide services to the aviation community.

The FAA has identified an issue that could unduly burden small commercial operators who do not hold a Part 121 certificate or a Part 135 certificate, who conduct operations listed in § 135.1(b), and who are included in this final rule because they conduct operations for compensation or hire. Under the terms of the proposed rule, these commercial operators would have been unable to contract for aircraft maintenance or preventive maintenance services. The proposed rule would have prohibited commercial operators from using the services of employees who work for fixed base operators and repair stations that service only general aviation aircraft if the employees of these entities were not subject to an FAA-approved comprehensive anti-drug program. In an effort to relieve this unintended burden, the FAA has included a new provision in the final rule directed solely at those individuals or entities. This provision states, in essence, that an individual who is otherwise authorized may perform maintenance and repair work on a commercial operator's aircraft, even if that individual is not covered by a comprehensive anti-drug program, in two specific instances. First, an individual who is not covered by the final rule can perform emergency repairs on an aircraft if the aircraft could not be operated safely to a location where a covered employee could perform the repairs. Second, an individual who

is not covered by the final rule can perform aircraft maintenance and preventive maintenance repairs on an aircraft if the operator would be required to transport the aircraft more than 50 nautical miles further than the closest available repair point from the operator's principal base of operations in order to have the work performed by a covered employee. The FAA believes that this narrow exemption from the requirements of the final rule will benefit the small commercial operators subject to the final rule but will not adversely affect the enhanced aviation safety intended by the final rule.

Medical Review Officer (MRO)

Several small entities, including EAF, believe that an MRO should have the responsibility to determine if an employee has been successfully rehabilitated and to determine when an employee may return to duty. ATA also recommends that an MRO be involved in the determination of an employee's successful rehabilitation. However, ATA notes that it would not always be feasible for an MRO to personally interview each employee who has a positive test result and recommends that the final rule accommodate that situation. RAA and Federal Express oppose any regulatory provision that would require an airline to appoint or to designate an MRO as part of an anti-drug program.

APFA believes that an MRO should be an independent physician who could assist labor and management EAP officials during analysis of drug test results and determination of the validity of test results in each employee's case. AFA believes that it is imperative that an MRO have specific training in toxicology and addictive diseases. Even with this training, AFA believes an MRO should be responsible for monitoring any testing program and interpreting test results to determine if referral to an EAP is warranted for a particular employee. AFA states that evaluation and referral for treatment and determinations regarding an employee's readiness to return to work should be made only by an EAP treatment professional. IUFA states that only the health care professional with whom an employee has been working is qualified to make a determination of when an employee is fit to return to duty. If an MRO and the responsible health care official disagree, a neutral third party should evaluate an employee and determine if an employee is fit to return to work. ALPA states that the determination of whether an individual has been rehabilitated, at least in the case of pilots, must be made by the Federal Air Surgeon under the medical certification procedures contained in Part 67 of the Federal Aviation Regulations.

FAA Response. In response to commenters who oppose the requirement to designate or appoint an MRO, the FAA notes that the rule does not require that each employer have its own individual MRO. The FAA anticipates that small companies will become part of, or will associate with, large companies or may participate in a consortium of small companies or associations, in order to comply with the MRO requirement of the final rule that will result in reasonable costs to small employers.

After consideration of the comments on the issue of MROs, the FAA has determined that the requirements proposed in the NPRM are appropriate. The FAA believes that the review and evaluation functions of an MRO provide critical and necessary safeguards for an employee who is subject to drug testing under the comprehensive anti-drug program. The FAA believes that the MRO will prove to be a beneficial asset to both employees and employers who are subject to the provisions of the final rule.

However, the FAA has expanded the role of the MRO after review of the comments and the proposed rule, although many of these responsibilities are contingent on an employer's decision to be involved in rehabilitation. For example, if an employer chooses to use an individual to perform a sensitive safety- or security-related function who has failed a drug test under this program and who has successfully completed rehabilitation, the MRO will develop an unannounced testing schedule for that individual. The MRO is the final arbiter in cases where an individual disputes a testing schedule after return to duty. Except in cases where the Federal Air Surgeon is involved, as discussed below, the MRO also is the final arbiter regarding return-to-duty recommendations. The MRO also shall review any rehabilitation program in which an employee or an applicant participated, after failing a drug test conducted in accordance with Appendix I to Part 121, to determine if an employee can return to duty or an applicant may be hired to perform a sensitive safety- or security-related function for an employer.

The FAA also has defined the factors that an MRO shall consider when making a return-to-duty determination. The MRO is required by the final rule to ensure that an individual is drug free as evidenced by a drug test; that an individual has been evaluated by a rehabilitation counselor for drug use or abuse; and that an individual has complied with testing and counseling requirements of a rehabilitation program. Thus, the MRO will have significant and sufficient information to recommend, based on the MRO's

professional opinion, that an individual or a current employee could perform a sensitive safety- or security-related function for an employer.

The FAA clarified the proposed requirement that the MRO "conduct a medical interview" with an employee as part of the review of a positive test result. The FAA did not intend that the proposal require a face-to-face interview with each employee. The final rule requires that the MRO provide an employee with an opportunity to discuss a positive test result with the MRO. Thus, for example, the MRO is permitted to discuss the positive test result with the employee by phone. The FAA believes that the clarification will relieve some administrative burdens on the MRO and employees in scheduling discussions of a positive test result. The FAA also added several requirements to the MRO's list of duties. First, the MRO is required to notify an employee of a confirmed positive test result within a reasonable time after verification of the result. Second, the MRO must process an employee's request to retest a specimen. The final rule provides that the employee's request to retest must be made in writing to the MRO within 60 days of notification of the confirmed positive test result.

In the NPRM, the FAA requested comment on who should make the decision that an employee had been successfully rehabilitated and could return to duty if the employee was drug free. ALPA specifically comments that return-to-duty determinations of pilots should be made by the Federal Air Surgeon consistent with the medical certification procedures contained in Part 67 of the Federal Aviation Regulations. Part 67 of the Federal Aviation Regulations define "drug dependence" as a ". . . condition in which a person is addicted to or dependent on drugs other than alcohol, tobacco, or ordinary caffeine-containing beverages, as evidenced by habitual use or a clear sense of need for the drug." After review of the comments and consideration of the medical standards contained in Part 67, the FAA has determined that the Federal Air Surgeon must be involved in the decision to return an individual who holds a Part 67 medical certificate to a sensitive safety-related position. The FAA believes that it would be contrary to the statutory mandate to determine the physical ability of an individual to perform duties pertaining to his or her airman certificate if the FAA failed to participate in a return-to-duty decision for an individual who holds a medical certificate.

Thus, the FAA has clarified the responsibilities of the MRO for situations where an employer voluntarily becomes involved in rehabilitation of employees or persons hired to perform sensitive safety- or security-related functions that require an individual to hold a medical certificate issued by the FAA. Under the rule, the MRO will perform all the duties and make all the determinations required in Appendix I for those individuals who do not hold a medical certificate issued pursuant to Part 67 of the Federal Aviation Regulations. For those individuals whose position with the employer requires them to hold a Part 67 medical certificate, the MRO is required to make a preliminary determination, consistent with the standard contained in Part 67, of probable drug dependence or a determination of nondependence. If the MRO makes a determination of nondependence based on his professional opinion, the MRO may recommend that an employee return to duty in a sensitive safety- or security-related position. The MRO is required to forward the finding of nondependence, the decision to return the employee to duty, and any supporting documentation, to the Federal Air Surgeon for review.

The FAA is aware that allowing an MRO to determine that an individual is not drug dependent and, therefore, may return to work in a sensitive safety- or security-related position without prior clearance by the Federal Air Surgeon may be controversial and may be viewed as inconsistent with aviation safety. However, in the FAA's opinion, it is consistent with aviation safety to provide subsequent FAA review of the treatment and any medical determination of nondependence that has been made by a competent licensed physician with knowledge of substance abuse disorders. The FAA also believes it is beneficial to provide subsequent review of an MRO's return-to-duty determinations, rather than initial review by the Federal Air Surgeon, so that an individual who is not dependent on drugs can return to work as soon as possible. Moreover, any individual who returns to work after rehabilitation is subject to unannounced testing as determined by the MRO and may be subject to ongoing counseling. Therefore, the FAA believes that initial determinations by an MRO and subsequent review by the Federal Air Surgeon will result in effective and fair treatment of individuals who are required to hold a medical certificate.

At any point that an MRO, in his professional opinion, makes a determination of probable drug dependence of an individual required to hold a medical certificate for a position, the MRO is required to report the name and other identifying information, and to forward all documentation that supports the determination, to the Federal Air Surgeon. If the MRO has made a probable drug dependence

determination of an individual required to hold a medical certificate, the MRO may not make a recommendation to return that individual to duty. From that point forward, the Federal Air Surgeon is responsible for determining whether the individual may keep a medical certificate or may be issued a medical certificate consistent with the medical standards contained in Part 67 of the Federal Aviation Regulations. Since drug dependency is a disqualifying medical condition under Part 67 of the Federal Aviation Regulations, it is critical that the Federal Air Surgeon be aware of any determination of probable drug dependence. An individual subject to the medical requirements of Part 67 who has a history of drug dependency must receive a "special issuance" medical certificate, issued at the discretion of the Federal Air Surgeon pursuant to § 67.19, before returning to work in a sensitive safety-related position. The Federal Air Surgeon is required to determine if that individual is qualified to hold a medical certificate and is physically able to exercise the privileges of an airman certificate. This determination, and the discretion to grant a special issuance of a medical certificate, clearly are within the exclusive expertise of the Federal Air Surgeon.

The FAA has added a provision to the final rule that requires the MRO to report the name of any current employee required to hold a medical certificate to perform a sensitive safety-related function who fails a drug test. The MRO also is required to report the name of any individual who holds a medical certificate and applies for a position with the employer in which a medical certificate is required and who fails a preemployment drug test. The MRO is required to report the names of these individuals to the Federal Air Surgeon because a positive drug test result clearly is probative evidence of possible drug dependence which is a disqualifying condition under the medical standards of Part 67 of the Federal Aviation Regulations. Therefore, the FAA added this requirement to ensure that the FAA is aware of conditions that may affect an individual's ability to physically perform the duties of an airman.

Administrative Matters and Reporting and Recordkeeping Requirements of Appendix I to Part 121

The FAA received very few comments regarding the reporting requirements of the proposed rules. ATA found the requirements of Appendix I to be acceptable. ATA recommended that the FAA establish a date to analyze the data collected regarding drug testing and rehabilitation and to review the regulations. Suburban Airlines, as part of its analysis of the costs of the proposals, estimates that the administrative costs and record retention costs of testing its 211 employees would be $8,500 per year. Federal Express supports auditing of annual, summary data by the FAA that is supplied by an employer regarding the employer's anti-drug program. Federal Express does not object to submitting an anti-drug program for the FAA's approval but believes that the 180-day implementation period will be insufficient if the final rule contains all of the requirements proposed in the NPRM.

FAA Response. The regulatory provisions that require an employer to submit a comprehensive anti-drug program and summary reports of the employer's program are critical measures to provide oversight of the industry's implementation of the comprehensive anti-drug program. The FAA believes that these minimal requirements are necessary to properly monitor the industry and to ensure compliance with the final rule. In addition, evaluation of the industry's implementation of the anti-drug program and the results of testing and rehabilitation programs will enable the FAA to review any demonstrated trends of drug use in the aviation industry and to modify the rules if warranted by the data. These reporting requirements are consistent with the FAA's existing industry recordkeeping and reporting requirements.

The FAA has modified the proposed recordkeeping and reporting provisions in the final rule. First, the FAA has clarified the requirements and organization of material that must be submitted in the employer's semi-annual report and annual report. In order that the FAA may accurately assess information submitted by an employer, the revised final rule provides that the employer must submit the total number of tests performed; the total number of tests performed for each category of test; and the total number of positive test results for each category of test given by an employer. These requirements are in addition to the proposed requirement to provide information on the number of positive test results according to the function performed by an employee for each type of test and according to the type of drug indicated by a positive drug test result. The FAA anticipates that requiring an employer to report the additional information will not overburden an employer because drug testing laboratories commonly report the bulk of this information when reporting drug test results. For example, as part of the DOT procedures (49 CFR Part 40), a DHHS-certified laboratory is required to provide a monthly statistical summary of initial and confirmation urinalysis testing data of employees tested

during the month to the person responsible for coordination of the drug program. The summary contains information on the number of specimens received for initial and confirmation testing; the number of specimens reported for initial testing; and the number of specimens reported positive for each of the five drugs or drug metabolites tested during initial and confirmation testing [DOT "Procedures for Transportation Workplace Drug Testing Programs;" 49 CFR Part 40].

The FAA had proposed that an employer only keep records relating to the specimen collection process in the NPRM. However, in light of other revisions to the proposed rule made in response to the comments, the employer also must retain records of test results and records relating to any employee rehabilitation. For example, the MRO is required to report the names of individuals holding a Part 67 medical certificate who fail a drug test and to forward test result and rehabilitation information regarding all individuals holding a medical certificate to the Federal Air Surgeon. Thus, the FAA has revised the recordkeeping provision of the proposed rule to require that an employer keep adequate information with which an employer and the FAA can evaluate the anti-drug program and determine any trends that may develop in the commercial aviation industry. Pursuant to the final rule, an employer is required to retain all confirmed positive test results and any rehabilitation records for five years. The employer may retain these records longer than five years although extended record retention is not required by the final rule. The FAA also added a provision to the final rule that requires an employer to keep any negative test result for a period of 12 months. However, all records retained by the employer are subject to limited release, as discussed below, for any period of time that the employer keeps these records.

Confidentiality of Test Results

Most small businesses, individuals, and labor unions support restrictions on the release of drug testing information. These commenters believe that the FAA should include a regulatory provision prohibiting the release of any drug testing information about an employee.

RAA believes that only the employer and the employee should have access to the results of the anti-drug program. Conversely, ERA Aviation suggests that employers should be required to report the names, social security numbers, and certificate numbers of employees testing positive to the FAA. TWU states that test results should be confidential as to all persons, except an applicant or employee, absent written consent or valid compulsory process. The laboratory may release confirmed positive test results or negative test results only to the employer's medical officer. TWU suggests that the medical officer may notify managerial or supervisory personnel who have a compelling need for the information to implement employer's policies or may notify the medical personnel responsible for an employee's rehabilitation.

RAA and Federal Express believe that job applicants should be required to disclose prior drug test results to subsequent employers as a condition of employment. ATA believes that records of applicants for employment who have tested positive in a preemployment drug test should be disclosed to third persons in limited situations, including authorization from the applicant, litigation by the applicant, pursuant to a valid subpoena, and by order of a court or administrative agency. However, ATA believes that test results, related personnel records, and rehabilitation data of incumbent employees should not be released to any person absent express consent of the employee. The Director of the Santa Maria Public Airport District believes that positive test results of all employees and applicants should be retained in a central database and should be available to potential aviation employers. Federal Express also believes that carriers should be free to exchange an employee's drug testing results and that the FAA should insulate carriers from liability for this disclosure.

ALPA states that information regarding an employee's drug testing history should be treated as confidential information, and clearly stated in any final rule, since it is "extracted" from the employee by requiring the employee to submit to drug testing. A rule of confidentiality should apply to all information obtained pursuant to the regulation whether obtained as a result of testing, interview, or examination, or treatment of an employee. ALPA believes that the only effective and appropriate rule is a complete ban on disclosure of confidential drug testing information without the employee's written consent. ALPA believes that a complete ban on disclosure is required for ethical reasons and to encourage candor by employees when dealing with medical professionals.

As a general matter, EEAC advocates protecting the privacy of individuals who undergo drug tests. EEAC believes that sharing of drug testing information among employers in a safety-sensitive

industry has superficial appeal. However, EEAC advocates caution in allowing a subsequent employer to rely solely on information obtained as a result of a different company's drug testing procedures.

FAA Response. The FAA has included a provision in the final rule that will govern release of records of an employee's drug testing results and any rehabilitation information. The FAA has decided that the legitimate individual privacy rights of an employee warrant strict limitations on the availability of an employee's drug testing results and rehabilitation information. The final rule provides that the release of an individual's drug test results and any information about an employee's rehabilitation program is permitted only with the specific, written consent of the individual. Due to the specific provisions discussed previously, this restriction does not override the requirement to report test results and any rehabilitation information to the Federal Air Surgeon of an applicant or an employee who holds a medical certificate who fails a drug test. The final rule also provides that the FAA is entitled to examine these records and that this information must be released to the NTSB as part of an accident investigation or to the FAA upon request.

Temporary Employees

The FAA solicited comments in the NPRM on the proposed definition of temporary employees and their eligibility for rehabilitation. RAA agrees with the FAA's proposed definition that temporary employees are those individuals who are hired for a period of less than 90 days. ATA and Federal Express propose a period of 120 days and TEMSCO Helicopters proposes a period of 150 days or less to determine an employee's eligibility for rehabilitation opportunities.

RAA and ATA agree with the FAA's proposal to exclude temporary employees from rehabilitation opportunities. RAA and ATA oppose the FAA's proposal to consider employees, who are eligible for reemployment by the same employer within 90 days following the original employment, as regular employees of the industry and, therefore, eligible for rehabilitation opportunities if they are rehired by the airline.

Several organizations, including TEMSCO Helicopters and ATA, comment that the time period of 90-day employment would adversely affect businesses who employ individuals on a seasonal or contract basis for longer periods of time. SSA states that small businesses should not be required to retain or to rehire a part-time or temporary employee who volunteers for, or otherwise participates in, rehabilitation.

FAA Response. In the NPRM, the FAA requested comment on the definition of a temporary employee and whether employers should be required to offer rehabilitation opportunities and job security to temporary employees. After consideration of the comments and due to deletion of the requirement to offer rehabilitation and job security to employees, a definition of temporary employees in the final rule is unnecessary. Therefore, an employer is not required by the rule to offer an opportunity for rehabilitation or to hold a position open for any temporary employee.

However, the final rule makes no distinction regarding testing of temporary employees. Thus, an employer is required by the final rule to include temporary employees in its drug testing program. The burden of testing temporary employees is slight when compared to the significant risk that a temporary employee who uses drugs poses to aviation safety. Thus, the FAA believes that it is important to test temporary employees for the presence of drugs or drug metabolites that may adversely affect performance of a sensitive safety- or security-related function. Many "temporary" employees, who actually are recurring seasonal employees or are regularly and continually rehired at the end of specified term, are "permanent" members of the aviation industry. The FAA firmly believes that these individuals clearly should be included in an employer's drug testing program in the interest of aviation safety. In addition, these employees, although they may consistently perform sensitive safety- or security-related functions pursuant to short-term contracts for a different employers, should be included in EAP education programs because of their continuous involvement in commercial aviation activities.

Uniformity versus Flexibility

ATA, American Airlines, Delta Airlines, IUFA, and IFFA believe that all employers and employees should be subject to uniform minimum rules and requirements in the area of drug testing. These entities strongly believe that company-specific plans may dilute the effectiveness of the anti-drug program or lead to harassment of employees.

EEAC supports the concept of employer flexibility to design specific anti-drug programs. EEAC believes that each employer should determine the circumstances of employee drug testing and the

content of employee assistance programs. EEAC supports preemployment testing, postaccident testing, periodic testing incident to scheduled physical examinations, and testing based on reasonable cause. EEAC believes employers should have the option of requiring random testing of employees.

EEAC readily endorses EAP services and rehabilitation of employees but believes that these benefits should not be mandated by the government. Decisions whether an employee has been rehabilitated and whether an employee should be permitted to return to work should be determined by the individual employer acting with the guidance of professionals involved in an employee's rehabilitation.

Federal Express believes that use of controlled substances at any time, whether on or off the job, should be prohibited due to the critical safety concerns in the aviation industry. Federal Express states that such a prohibition ". . . helps ensure safe operation of aircraft and protects employees and the general public from unnecessary safety hazards." However, Federal Express believes that the FAA should impose only minimum regulatory requirements of a drug testing and rehabilitation program and allow carriers to structure individual programs for their particular employees.

FAA Response. The FAA agrees with the commenters who conclude that mandating minimum, uniform requirements for comprehensive anti-drug programs in the commercial aviation industry is necessary in order to maximize the effectiveness of the program and to achieve a safe and drug-free commercial aviation workforce. The FAA believes that the comprehensive anti-drug program promulgated in this final rule meets the agency's statutory mandate to promote the safety of civil aircraft operating in air commerce and that it responds to the public's need for a safe aviation environment.

In response to the comments, particularly in the area of anti-drug programs implemented by small aviation entities, the FAA has addressed the need for employer flexibility by revising the program requirements or the implementation dates. The FAA has not included specific, detailed provisions regarding the content and requirements of an individual's treatment due to the significant variables that affect these components based on each individual, the type of drug used, and the level of any drug use, drug dependence, or drug addiction. Thus, in the area of an employee's rehabilitation treatment plan, the FAA agrees that this decision is best left to the discretion of those individuals who are significantly and directly involved in the employee's rehabilitation.

The FAA has imposed uniform, minimum requirements on employers and employees in other areas of the comprehensive program. Although employers are required to comply with the minimum requirements, employers may expand the minimum testing requirements to include other employees or may offer EAP services and rehabilitation opportunities to employees. If the employer expands its anti-drug program, any additional components of the employer's anti-drug program may not contradict or dilute the effectiveness of the FAA's final rule. As stated in the NPRM, while the FAA would not prohibit employers from taking independent actions beyond those required by the rule, such actions may not adversely affect the final rule and would not be authorized by the FAA. Therefore, additional benefits or more stringent procedures would not be considered part of the employer's approved program.

The FAA received many comments for revision of the final rule to include testing for additional drugs and permission for an employer to use analytical procedures that are not addressed in the DHHS guidelines. The Department of Transportation will address the issue of testing for additional drugs in the DOT "Procedures for Transportation Workplace Drug Testing Programs" (49 CFR Part 40). DOT intends to follow the proposed DHHS guidelines which allow testing for other drugs, in addition to the five drugs specified in the appendix, only in the context of testing based on reasonable cause. Neither this final rule nor the DOT procedures address the issue of an employer's ability to test for drugs, other than the drugs specified by the FAA, to the extent that an employer has independent legal authority to test for other drugs.

Regulatory Consent

AOPA believes that the FAA should eliminate the regulatory section that would require a pilot to submit to a drug test requested by an employer, a local law enforcement officer, or an FAA inspector. AOPA asserts that the FAA does not have the authority or the expertise to administer a drug test and that refusal to submit to a test is best left to local law.

ATA agrees with the sanctions proposed for an employee's refusal to submit to a required test. Henson Airlines has an existing policy that an employee's refusal to submit to a drug or alcohol test will result in disciplinary action that could include dismissal from the company.

FAA Response. The FAA has not revised the provisions proposed in the NPRM that would provide sanctions for an employee's refusal to submit to a drug test required as part of the comprehensive anti-drug program. The FAA believes that the sanctions proposed in the NPRM are appropriate and are necessary to ensure compliance with the requirements of the anti-drug program. In response to AOPA's comment, the FAA would not "administer" a drug test under this provision. The FAA would simply request that the employee submit to a drug test, collected and analyzed consistent with the DOT procedures of 49 CFR Part 40, where testing would be otherwise authorized under an anti-drug program. This provision is necessary primarily in the area of postaccident drug testing where the FAA may be the only official at the scene of an accident with the authority to request that an individual submit to a postaccident drug test.

The FAA also believes that compliance with the testing requirements of the final rule is not an issue that is best left to local law. As a preliminary matter, the FAA has clear statutory authority to promote and maintain aviation safety. Second, the FAA is the entity that issues airman certificates and that is charged with ensuring that an airman is qualified to exercise the privileges of that Federal certificate. Finally, sanctions imposed pursuant to State or local law may vary widely among each jurisdiction and would subject similarly-situated employees to dissimilar treatment according to the content of the local law. Therefore, the FAA believes that it is appropriate to provide that an individual is disabled from performing a sensitive safety- or security-related function and to include sanctions for a failure to submit to a drug test to promote aviation safety and to ensure consistent treatment of individuals engaged in commercial aviation.

Existing Regulations

AOPA, several small aviation entities, and many individual commenters believe that the FAA's existing regulations, and increased FAA enforcement of these regulations, are sufficient to deal with any drug problem in the aviation industry.

A commenter speaking as national litigation counsel for AOPA and on behalf of the California Aviation Council and the Orange County Aviation Association believes that the types of testing proposed by the FAA are duplicative of the existing opportunities for testing in the periodic medical examination of commercial and air transport pilots. In addition, this commenter states that the FAA has the authority, pursuant to § 609 of the Federal Aviation Act, to reexamine or reinspect any airman at any time. Therefore, the commenter believes that the FAA could implement a lawful drug testing program within the existing infrastructure of the FAA's certification procedures. The commenter also states that the regulations proposed in the NPRM create an irreconcilable conflict with the FAA's safety-enhancement enforcement system. The commenter believes that the proposed anti-drug program will prove detrimental to aviation safety because the number of enforcement cases brought by the FAA for violations of the proposed regulations will overburden the FAA and the administrative law judges assigned to hear enforcement cases.

FAA Response. The FAA disagrees with the commenters who state that the comprehensive anti-drug program requirements are redundant and that increased enforcement of the existing regulations or reexamination of individual airmen will result in a drug-free commercial aviation environment. The existing regulations do not address the issue of drug testing of aviation personnel performing sensitive safety- or security-related functions in commercial aviation. Thus, in the FAA's opinion, enforcement of existing regulations or individual reexamination will not sufficiently deter any drug use in commercial aviation. In addition, the existing regulations do not address the critical issues of procedural safeguards in collection and testing of samples for the presence of drugs or drug metabolites that are provided in the DOT procedures of 49 CFR Part 40.

Establishing a drug testing program within the existing "infrastructure" of the existing certification procedures is equivalent to implementing only a periodic testing requirement. Because of an individual's ability to circumvent periodic testing, based on a relatively short abstinence from drug use, periodic testing alone is not a sufficient deterrent to drug use in commercial aviation. The FAA believes that it is appropriate and necessary to provide minimum requirements, applicable to employers and employees, that will achieve a drug-free commercial aviation environment.

Preemption of State and Local Laws

ATA, Federal Express, and RAA recommend that the FAA insert a regulatory provision that explicitly proscribes State or local legislation that would interfere with the consistent and uniform testing and rehabilitation opportunities for aviation employees mandated by this final rule.

FAA Response. The FAA agrees with the commenters who are critically concerned about conflicting State and local laws that would interfere with an effective comprehensive anti-drug program. The FAA believes that inconsistent laws or regulations applicable to the subject matter of this final rule will frustrate the intent of the rule and severely hamper implementation and administration of an anti-drug program. Therefore, the FAA has included a preemption provision in the final rule that is intended to enhance the efficiency and effectiveness of the requirements of the final rule.

The FAA's issuance of the final rule preempts any State or local law, rule regulation, order, or standard that covers testing of commercial aviation employees for the presence of drugs or drug metabolites. The new rule does not preempt any State law that imposes sanctions for the violation of a provision of a State criminal code related to reckless conduct leading to actual loss of life, injury or damage to property, whether such provisions apply specifically to aviation employees or generally to the public. The scope of the authority preempted by this final rule and the authority reserved to the States is essentially identical to the provision in the regulations issued by the Federal Railroad Administration of the Department o Transportation (49 CFR 219.13)

Waivers or Exemptions

ATA believes that waivers and modifications of an employer's drug testing program should be granted if exceptional circumstances warrant the waiver or modification and if an equivalent level of safety can be maintained under the terms of the waiver. American Airlines advocates that all carriers should be subject to identical requirements and waivers should not be granted.

FAA Response. The final rule sets forth minimum requirements that must be included in an employer's anti-drug program. However, the rule generally does not set forth detailed program administration requirements in most areas of the program. Also, an employer is not prohibited from establishing an anti-drug program that goes beyond the minimum requirements promulgated by this rule. As a result of the FAA approval process of an employer's anti-drug program, a certain amount of discretion and flexibility is retained for an employer's administration of its anti-drug program.

On this basis, the FAA has determined that any requests for exemption from a requirement of this rule should be handled in the same manner as requests for exemptions of other FAA regulations under Part 11 of the Federal Aviation Regulations. The FAA believes that a case-by-case determination will be necessary to ensure that any exemptions from the requirements of this final rule are in the public interest.

Contractors

The FAA has revised the proposed rule as it applies to contractors whose employees perform sensitive safety- or security-related service for aviation entities subject to the rule. Under the proposed rule, contractors whose employees perform covered service to aviation entities were authorized to submit their own plans to the FAA to implement directly an anti-drug program. These contractor employees also could have been included in the anti-drug program of the aviation entity for whom they were providing services. However, for the final rule, the FAA concluded that all persons performing sensitive safety- or security-related functions should be under the plan of the aviation entity for whom they provide the services.

The FAA believes that administration of the anti-drug program would be vastly more efficient—for aviation entities directly subject to the rule, contractors, and the FAA—by reducing the proliferation of different plans submitted by a significant number of contractors who provide covered service to the same aviation entity. In addition, the FAA believes that limiting the submission of plans to those aviation entities directly subject to the rule will provide a more consistent approach to administration of industry anti-drug programs and will minimize the difficulties of ensuring compliance with the final rule. As noted earlier in this preamble, the final rule provides that an employee who is subject to the requirements of any employer's FAA-approved anti-drug program may provide sensitive safety- or security-related services to any other employer. Therefore, so long as a contractor employee is covered by one aviation entity's anti-drug program, the employee would be able to provide services for any employer subject to the rule. Thus, a contractor whose employees provide services to multiple aviation entities would not be subject to any greater burden than those entities directly subject to the rule.

Additional Issues

Alcohol. The NTSB, AMA, Henson Airlines, and other individual commenters suggest that the FAA include alcohol as a tested substance in any required testing program.

The FAA expressly excluded the issue of alcohol testing from this rulemaking for a variety of reasons stated in the NPRM; therefore, these comments are beyond the scope of this rulemaking. Excluding alcohol testing from this rulemaking should not be construed to mean that the FAA is ignoring the fact that alcohol may be a substance of widespread abuse in the aviation industry. As stated in the NPRM, the FAA will continue to review the effectiveness of regulations dealing with the issue of alcohol use and abuse in aviation and may consider additional rulemaking action in the future. In addition, employers are not prohibited from initiating alcohol testing programs for their employees if not otherwise prohibited from testing for alcohol.

The Department of Transportation will include a provision in the DOT procedures (49 CFR Part 40) that will enable an employer to test for the presence of alcohol in an employee's system. Pursuant to those procedures, the employer could include testing for alcohol in testing protocols only pursuant to FAA approval if the testing is authorized under the FAA regulations.

Testing for additional drugs. The NTSB recommends that the FAA expand the list of prohibited drugs to include those substances listed in Schedule III and Schedule IV of the Controlled Substances Act. The NTSB also recommends that the FAA develop a medical exemption process to provide for a pilot's legitimate medical use of these substances. ATA recommends that mind-altering prescription drugs, such as barbiturates, benzodiazepines, methadone, and methaqualone, also be listed as prohibited drugs in any drug testing program. ERA Aviation supports this recommendation and suggests that propoxyphene, quaaludes, and codeine be added to the list of drugs that would be screened.

The five drugs specifically listed in Appendix I to Part 121 are the five drugs for which DHHS has set cutoff levels and testing protocols in its mandatory guidelines (53 FR 11970, 11973-11974; April 11, 1988). The Department of Transportation intends to adopt these cutoff levels and testing protocols verbatim in its procedures applicable to the aviation industry (49 CFR Part 40). An employer is required to test for marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines, and metabolites of those drugs because of the incidence and prevalence of use of these drugs in the general population and based on the experience of the Department of Defense and the Department of Transportation in their drug testing programs. Because analysis of additional, less-frequently used drugs could result in substantial additional expense, the FAA believes that requiring an employer to test for these five drugs is appropriate at this time. Any testing for other drugs, beyond the specified drugs listed in the appendix, is authorized only in the context of testing based on reasonable cause. Only if, in that context, the FAA authorizes testing for additional Drug X under 49 CFR Part 40 (an approval which would be granted only after consultation with the Department of Health and Human Services, and only on the basis of an HHS-established testing protocol and positive threshhold) may the employer also test the sample for that drug.

Absent such an approval, if the employer wants to test, in addition, for Drug Y, the employer must obtain a second sample from the employee. The obtaining of this second sample is not under the authority of the DOT regulation. The employer must base its request for the second sample on whatever other legal authority is available, since the employer cannot rely on the DOT regulation as the basis for the request.

The FAA is aware that listing the drugs that will be analyzed as part of a drug testing program may result in individuals using alternative drugs that are not analyzed pursuant to the final rule. As part of the agency's review and analysis of the industry's anti-drug programs, the FAA encourages the aviation industry to notify the FAA if different drugs are being used in the aviation community. As part of the FAA's oversight of the comprehensive anti-drug program, the FAA will seek statistical information, to the extent any information is available, from the National Institute on Drug Abuse (NIDA), other Federal agencies, and any other source to determine if additional, different drugs should be included in the comprehensive anti-drug program to ensure aviation safety.

Testing of other individuals. Several commenters, including the AMA, NTSB, ATA, and ALPA, suggest that the FAA expand the list of individuals to be tested, or defined as sensitive safety- and security-related employees, under the regulations. Several entities recommended that the FAA require testing of all individuals certificated by the FAA, including general aviation pilots. ALPA, ATA, and Martin Aviation recommend that any employee who performs a function in or around an aircraft (deicing, weight and balance computation, fueling, taxiing or towing aircraft, weather forecasting, baggage handlers, and cargo personnel) and supervisors of covered employees be subject to testing because

these individuals affect aviation safety. Federal Express states that it would include ramp agents responsible for weight and balance of an aircraft, deicers, and fuelers in a drug testing program. Federal Express supports inclusion of aviation security screeners in a drug testing program although it does not employ these individuals. ALPA and American Airlines also urge the FAA to include corporate officers in any testing program. The Director of the Santa Maria Public Airport District suggests that the FAA amend Part 107, Part 108, and Part 139 to ensure that employees of certificated airport operators are included in the anti-drug program. Tramco, Inc. suggests that Part 145 be amended so that repair station employers are required to comply with the anti-drug requirements in the same manner as Part 121 certificate holders. Tramco also suggests that aircraft manufacturers be required to implement an anti-drug program.

After review of these various comments, the FAA has retained the basic regulatory list of functions proposed in the NPRM. However, the FAA has eliminated parachute rigging duties from the list of functions contained in Appendix I to Part 121. The activities performed by parachute riggers do not have a direct and significant impact on the safe operation of civil aircraft as do the other sensitive safety- and security-related functions listed in the appendix.

The FAA has not revised the rule to require drug testing of supervisory or managerial employees. However, the FAA notes that under the proposed rule and the final rule, supervisory or managerial employees who perform sensitive safety- or security-related functions for an employer are not permitted to perform these functions, either on a permanent or temporary basis, unless those employees are subject to the requirements of the employer's anti-drug program. Also, repair station employers and employees are subject to the requirements of an anti-drug program if these individuals provide contract service to an employer who is subject to the requirements of this final rule. Under the terms of the rule, a Part 121 certificate holder, a Part 135 certificate holder, or an entity or individual covered by the rule because they operate for compensation or hire may only use the services of persons who are subject to the requirements of an FAA-approved program. Therefore, although Part 145 was not amended, repair station employers and employees are included to the extent that they provide contract service or repair aircraft operated by an employer subject to the final rule.

The comprehensive anti-drug programs, proposed by the operating administrations within the Department of Transportation, focus on drug testing for various commercial transportation activities. The scope and direction of the FAA's comprehensive anti-drug program is consistent with the present Department-wide policy.

The FAA encourages the public and members of the aviation industry to submit information to the FAA (directed to the person listed in the heading FOR FURTHER INFORMATION CONTACT) that may warrant inclusion of different drugs in a drug testing program or additional categories of employees to be tested. If it is necessary to preserve confidentiality of any information submitted to the FAA, the FAA encourages aviation industry representatives or trade associations to transmit the information to the FAA. The FAA will monitor the data gathered pursuant to this program, and will continue to review other information regarding drug use in private and commercial aviation, to determine if further rulemaking action in this area is required or necessary. The FAA may revise other sections of the Federal Aviation Regulations, to broaden the applicability and scope of the comprehensive anti-drug program, if further study warrants this action. The final rule does not prohibit an employer from testing any other employee or group of employees, if the employer is not otherwise prohibited, that the employer determines should be tested for drugs to provide safety or efficiency in the workplace.

Conflict with foreign laws or policies. We have determined not to make the rule applicable in any situation where compliance would violate the domestic laws or policies of another country. In addition, because of the potential confusion that may exist involving application of this rule in situations where compliance could violate foreign laws or policies, we have determined not to make the rule applicable, until January 1, 1990, in any situation where a foreign government contends that compliance with our rule raises questions of compatibility with its domestic laws or policies. During the next year, the Department of Transportation and other U.S. government officials will be working closely with representatives of foreign governments with the goal of reaching a permanent resolution to any conflict between our rule and foreign laws and policies. The U.S. and Canadian Governments have already established a bilateral working group in an attempt to achieve this objective. We believe that considerable progress has already been made, and further meetings will be held in the near future. While we believe that this can be a model for addressing the concerns of other countries, it is not intended to be the

exclusive means. The Administrator may delay the effective date further under this section, if such delay is necessary to permit consultation with any foreign governments to be successfully completed.

It is the agency's intention to issue a notice no later than December 1, 1989, that would make any necessary amendments to the rule as a result of discussions with foreign governments. Shortly after their issuance, any such notices will be published in the *Federal Register*. While we recognize that any decision not to apply our rule to foreign citizens has the potential to create some anomalous conditions in competitive situations, it is the intention of the U.S. Government to make every effort to resolve potential conflicts with foreign governments in a manner that accommodates their concerns while ensuring the necessary level of safety by those we regulate.

Statutory authority. One commenter questions the authority of the FAA to promulgate regulations that proscribe recreational drug use by any airman during his or her free time that does not impair the airman's performance on the job. As stated by the commenter, the FAA's mandate is to ensure the safety of civil aviation and not to enforce criminal drug enforcement laws.

The FAA clearly has the statutory authority to mandate continuing eligibility requirements and minimum physical and medical standards to promote and develop safety in air commerce and civil aeronautics. For example, the FAA has clear authority to prohibit off-duty consumption of alcohol prior to aircraft operation to ensure that a crewmember is not impaired by alcohol while acting or attempting to act as a crewmember of a civil aircraft. Similarly, in the FAA's opinion, this broad authority includes the authority and ability to prohibit the presence of any drug or drug metabolite in an individual's system that may adversely affect aviation safety.

As noted in the NPRM, it often is difficult to detect the subtle and varying degrees of drug impairment to motor skills and judgment that are critical to aircraft operation or performance of sensitive safety- and security-related duties. Certain drugs or drug metabolites remain in an individual's system long after use and may impair an individual's subsequent performance. Indeed, the Vice President of a national firm providing consultation services on drug abuse prevention to American Airlines, with significant experience in identification and treatment of drug users, states that marijuana use disrupts recall and short-term memory and that there is serious impairment of skills appropriate to industrial operations for 10 to 12 hours after smoking a single marijuana cigarette. The FAA believes that it is clearly in the public interest and within the FAA's statutory authority to ensure that any "hangover effect" associated with recreational use of illegal drugs does not interfere with an individual's performance and, thus, jeopardize air safety.

Summary of Significant Changes from the Proposed Rule

The FAA amended several sections of the proposed rule in response to comments received from the public on the issues and in response to questions raised in the NPRM. Any changes that significantly altered the requirements of the anti-drug program are discussed previously and are summarized in this section.

The definition of an "employee" in Appendix I to Part 121 was amended to make it clear that employees of an entity that holds both a Part 121 certificate and a Part 135 certificate are to be considered employees of the Part 121 certificate holder. This will ensure that all employees of a single entity, regardless of the type of operating certificate held by the employer, are subject to the same requirements and time schedules for the purposes of an anti-drug program.

The definition of "employer" also was amended. This section was amended to make it clear that an employee of one company that has implemented an anti-drug program may perform sensitive safety- or security-related functions for another employer. For example, a mechanic employed by American Airlines, who is covered by American's anti-drug program, is permitted to perform maintenance duties or repair work on an aircraft owned by United Airlines.

The Department of Transportation has determined that certain modifications of the DHHS guidelines, proposed in the NPRM, are appropriate for this rulemaking. The FAA has referenced a DOT interim final rule (49 CFR Part 40), entitled "Procedures for Transportation Workplace Drug Testing Programs," in this final rule.

The FAA did not revise significantly the section of the appendix regarding the substances for which testing must be conducted. However, the appendix provides that testing for drugs listed in Schedule I and Schedule II of the Controlled Substances Act is permitted only during testing based on reasonable

cause. In addition, the testing must be conducted in accordance with the DOT "Procedures for Transportation Workplace Drug Testing Programs" and pursuant to the employer's approved anti-drug program.

The FAA clarified the preemployment testing provision to make it clear that an employer may use a person to perform a sensitive safety- or security-related function who passed a previous preemployment drug test for an employer and has continuously been subject to testing under an approved anti-drug program even if the individual is not currently employed by that employer. The rule prohibits an employer from "hiring" any person after failing a preemployment drug test. The rule does not require an employer to test every applicant but only to test an applicant before he or she is actually hired by the employer.

The periodic testing provision was revised to make it clear that an employee is only required to provide one specimen for testing during the employee's first periodic medical examination in the first calendar year of implementation of the final rule. Also, this section was revised to enable an employer to discontinue periodic drug testing of employees as part of a medical examination after the first full calendar year of implementation of the employer's anti-drug program. After the first year of implementation, the employer's random testing program should be fully implemented and periodic testing as part of a medical examination may be eliminated.

The FAA revised the random testing provision of the final rule in response to the comments and with reference to the plans of the random testing program started by the Department of Transportation. The final rule provides for phased implementation of unannounced testing based on random selection beginning with an annualized rate equal to 25 percent of covered employees during the first 12 months of program implementation. Thereafter, the employer must achieve and maintain an annualized testing rate equal to 50 percent of the covered employees. The FAA also added a provision that would enable an employer to randomly select employees for unannounced testing based on a method, other than the methods originally proposed in the NPRM, that has been approved by the FAA.

The FAA has amended the postaccident testing provision. The revised section requires an employer to ensure that postaccident testing is conducted as soon as possible but not later than 32 hours after an accident.

As discussed previously, the FAA has expanded the bases upon which an employer may substantiate the determination to test an employee based on reasonable cause. In order to address concerns expressed in the comments, the FAA has included a provision in this section that allows a small aviation employer to test an employee based on a determination of reasonable cause made by only one supervisor trained in detection of drug use symptoms. As proposed in the NPRM, an employer may test an employee performing a sensitive safety- or security-related function for any Schedule I or Schedule II drug, if the employer conducts the testing based on reasonable cause in a manner consistent with the employer's approved anti-drug program and the DOT procedures (49 CFR Part 40).

In response to comments specifically solicited in the NPRM, the FAA has included a provision for unannounced testing after an employee's return to duty. Employees who failed a drug test or who refused to submit to a drug test and who have not received a recommendation to return to duty from an MRO must be tested in accordance with the return-to-duty provision of the final rule. This section requires an employer to implement a reasonable program of unannounced testing, for not longer than 60 months, after an individual has been hired or an employee has returned to duty to perform a sensitive safety- or security-related function.

The FAA has expanded the role of the medical review officer (MRO). For example, the MRO will review rehabilitation programs to determine if an employee may return to duty or an individual may be hired to perform a sensitive safety- or security-related function for an employer. The MRO also is the final arbiter in the case of disputes regarding a schedule for unannounced testing after an employee's return to duty. The FAA has added several provisions to this section to describe the duties of an MRO and the involvement of the Federal Air Surgeon where an individual who holds a medical certificate tests positive for the presence of a drug or drug metabolite.

The FAA has added a provision that protects the confidentiality of employee drug testing results and any rehabilitation information. This information may be released by an employer only with the written consent of the employee. However, the FAA may examine test result and rehabilitation records and the information may be released to the NTSB as part of an accident investigation or to the FAA upon request.

For various reasons discussed previously and in response to many comments, the FAA determined that opportunities for rehabilitation and job security for employees will not be mandated by this final rule. Rehabilitation opportunities and job security issues may be considered by an employer and should be determined by employers and employees in the specific employment context.

The FAA has tailored the schedule proposed in the NPRM for submitting an anti-drug program to the FAA and implementation of an anti-drug program in response to comments received in response to the NPRM. These changes have been fully discussed previously. In essence, the large aviation companies are required to comply with the schedules proposed in the NPRM. Smaller aviation companies have additional time to develop and implement an interim anti-drug program and slightly broader timeframes to develop and submit a random testing program. The smallest aviation entities covered by the rule initially have additional time to develop and implement testing programs for their employees.

The FAA also has included a section in Appendix I to Part 121 to provide for the preemptive effect of these regulations regarding any State or local law covering the subject matter of drug testing of commercial aviation employees. However, issuance of the final rule does not preempt State criminal laws that impose sanctions for reckless conduct leading to death, injury, or property damage.

Comments on the Cost of the Anti-Drug Program

Most small entities object to the anti-drug program based on the financial and administrative burden that these entities believe would result from implementation of the rule as proposed. Executive Air Fleet (EAF) is a Part 135 certificate holder With 200 employees who would be covered by the proposed rules. Because drug testing is widespread in other industries, EAF states that the aviation industry should "move ahead" with the proposed rules. However, EAF states that the potential costs of an anti-drug program could be burdensome even to an operation the size of EAF. EAF estimates that drug testing as proposed in the NPRM would cost $25,000 annually to test its 200 covered employees. EAP services would cost up to $26.00 per employee. EAF believes that EAP services would have to be available to the total employee population, not only sensitive safety- or security-related employees, because it is a benefit offered to employees. Thus, EAF estimates that EAP services for a business employing 400 individuals would cost $10,400 annually.

Metro Air is a Part 135 certificate holder using two single-engine aircraft, two light twin-engine aircraft, and three helicopters. Metro Air also is a flight school operator using 15 aircraft. Metro Air employs six full-time pilots and four to five part-time pilots. Metro Air states that the proposed rule is not financially feasible for small commercial operators because the company is not in a position to retain or offer rehabilitation to an employee who tests positive for drugs and the cost of hiring an MRO to interpret test results would be prohibitive. Metro Air believes that the FAA should conduct all drug testing of employees and administer any rehabilitation offered to an employee

Ryder Systems, Inc. employs over 40,000 individuals who perform a variety of jobs in the transportation industry. Ryder Systems implemented an EAP in 1984. Ryder Systems estimates that 40 percent of the employees enrolled in the EAP due to controlled substance abuse problems require 28- to 30-day inpatient treatment that costs between $10,000 to $20,000. The average cost for controlled substance rehabilitation per employee is $3,000. On this basis, Ryder Systems believes that the FAA should only require that an employer establish an EAP and offer EAP services to an employee but should not specify the details of an EAP or rehabilitation program. However, Ryder Systems believes that the FAA should preserve the employer's discretion to determine EAP eligibility standards for employees, treatment of repeat offenders, and the conditions for allowing an employee to return to work.

American Airlines estimates that rehabilitation and treatment of an employee costs $8,000. For this reason and to ensure that the quality of treatment will lead to a reasonable prognosis for recovery, American Airlines believes that employers and contractors should be financially responsible for rehabilitation. Conversely, RAA and several small aviation entities, including Martin Aviation, Inc., believe that the FAA should not force airlines to incur the cost of employee rehabilitation due to the economic impact of the requirement on the regional airline industry.

RAA states that the average cost of a single random test would be $55 and that retesting for verification of positive results could cost up to $80 per test. On this basis, RAA estimates that the cost of random testing at a rate of 125 percent annually for regional airline pilots only will approach $500,000 annually. Due to the high cost of testing at a rate of 125 percent and the fact that the proposed rules would require testing of other aviation safety-related personnel in addition to pilots, RAA suggests that a random sampling rate of 50 percent would be appropriate.

Suburban Airlines employs 211 employees who would be covered by the proposed program. Suburban estimates that the FAA's program would cost over $28,000 annually at present employment levels. Based on Suburban's experience, 5 percent of initial tests indicate positive results for the presence of drugs and must be confirmed to verify the initial test results. Tramco, Inc., a certificated repair station, estimates that compliance with the anti-drug program will cost $24,000 annually plus counseling and lost time costs.

ALPA believes that the FAA incorrectly estimated the cost of the proposed anti-drug program and, therefore, the drug testing program is not justified by any reasonable cost-benefit analysis. ALPA states that the laboratory cost per test, assuming a random testing rate of 125 percent and a negotiated cost similar to the cost contained in the economic analysis, is merely a fraction of the total costs associated with a drug testing program. ALPA maintains that a drug testing program could cost at least $280 million per year. ALPA's estimate of cost is based on substantial administrative and personnel expenses, transportation of employees to a collection site, employee compensation during collection of a specimen, and compensation of employees who replace employees being tested during revenue flights.

A commenter speaking as national litigation counsel for AOPA and on behalf of the California Aviation Council and the Orange County Aviation Association believes that the FAA understated the costs and overgeneralized the benefits of the proposed rule contained in the economic summary of the NPRM. This commenter also believes that the FAA failed to consider more effective, practical, and less intrusive programs to deal with any drug problem that might exist in the aviation industry. The commenter states that the economic analysis fails to consider the potentially destructive economic effect of the proposed rules on small, commercial operators. Therefore, the commenter states that the FAA may not issue a final rule because the FAA has failed to meet the criteria of Executive Order 12291.

California Aeromedical Rescue and Evacuation, Inc. (CARE) does not believe that the proposed rules are reasonable due to the lack of evidence of a drug problem in aviation. CARE comments that the cost of maintaining a drug testing program, whether or not that program includes random testing, is significant. CARE employs 10 pilots, 4 mechanics, and approximately 45 flight nurses and flight medics. CARE estimates that the cost per test is $45 and, therefore, the fiscal impact on its operations will be between $8,000 to $12,000 per year. CARE believes that its scarce financial resources should be used for training, equipment, and maintenance. CARE states that preemployment and probable cause testing are wise and prudent measures. CARE predicts that including other types of testing will cause some of its employees to leave the company due to issues related to the constitutionality of unannounced testing without particularized suspicion of drug use. CARE states that the costs of litigation and training for new employees should be directed to other more useful avenues.

The commenters stress that while the costs developed by the FAA may be appropriate for larger companies, who are able to take advantage of "economies of scale," small aviation companies would incur significantly higher costs.

Two commenters who submitted a joint comment on the economic analysis contained in the NPRM dispute the benefits of the proposals in the NPRM, particularly with the FAA's estimate of the possible detection rate. These commenters present statistical analyses, using the data in the NPRM on general aviation pilots, to demonstrate, in their opinion, a considerably reduced detection rate and, therefore, considerably reduced benefits.

FAA Response. The FAA agrees that costs of screening and confirmation tests may reflect the bulk purchasing power of laboratory service for a large number of specimens and, therefore, may be applicable only to large aviation companies. However, the FAA lacks clear and definitive data regarding the extent to which "economies of scale" will affect or reduce costs. Although some commenters believe that the FAA failed to consider costs associated with administration of the anti-drug program, the initial Regulatory Evaluation and the FAA's total costs stated in the NPRM included these administrative costs.

The figures in the NPRM were based on average industry costs available to the FAA at the time of the NPRM. The FAA believes that the costs contained in the NPRM may closely equate to actual costs because the vast majority of personnel subject to the testing requirements of the proposed rule, by a ratio of 10 employees of large companies to one employee of small companies, are employees of large companies. Moreover, the FAA notes that small Part 135 certificate holders and other small

aviation companies often are associated with larger companies. The FAA believes that small aviation operators could participate with large companies, much as these small companies contract for maintenance, reservations services, gate agents of larger companies, to conduct the required tests pursuant to the rules and, thus, take advantage of the economies of scale.

Nevertheless, the FAA increased the estimate of drug testing costs in an effort to respond to the concerns expressed by the commenters and to reflect the potential testing costs incurred by small aviation operators. For the purposes of the Regulatory Impact Analysis of the final rule, the cost estimate of screening tests was increased to $25.00 per test; the cost estimate of confirmation tests was increased to $35.00 per test; and the administrative costs were increased to $35.00 per test.

The FAA recognizes that broad rehabilitation programs would be very costly and could be cost-prohibitive for small aviation companies. For a variety of reasons discussed previously, the final rule does not require an employer to offer an opportunity for rehabilitation to employees and the FAA has not mandated a minimum amount of time that an employer must hold a position open while an employee is prohibited from performing sensitive safety- or security-related functions.

In estimating the benefits that are expected to accrue as a result of a comprehensive anti-drug program, the FAA noted its lack of specific, available data in the NPRM. The FAA disagrees with the commenters who dispute the analysis of benefits provided by the FAA in the NPRM and notes that a comparison of the benefits determined by these commenters with the estimated costs of the rule would still result in a cost beneficial rule. No evidence is available to demonstrate that sole reliance on the data regarding deceased general aviation pilots is representative of the population of employees who are subject to testing under the provisions of the final rule.

Infrequent and sporadic data is available in the commercial aviation sector. The FAA can not rely solely on information deduced from the two commercial aviation accidents discussed previously. The information does not reveal any significant patterns that would assist the FAA's estimates of costs and benefits of the proposals and, in any event, this information is not generally representative of personnel who are not pilots but who are subject to the requirements of the rule. For these reasons, the FAA believes that it is appropriate to use the national NIDA study information to estimate the potential costs of the rule because it more accurately reflects the broad population of employees who would be tested pursuant to a comprehensive drug testing program.

Economic Summary

In accordance with the requirements of Executive Order 12291, the FAA reviewed the cost impact and benefits of this final rule. Cost factors were obtained from information in the public docket including comments received during the FAA's public hearings. Additional data were furnished by air carrier trade associations, public institutions, and major chemical and drug testing laboratories. This rulemaking does not meet the criteria of a "major" rule under Executive Order 12291 because it is not likely to have an annual effect on the economy of $100 million or more. A summary of the FAA's estimates of the costs and benefits is provided below. However, because the rulemaking is a costly undertaking, the FAA considers the final rule to be a "major" rule under Executive Order 12291. For this reason, the FAA prepared, and placed in the docket, a Regulatory Impact Analysis of the final rule. In addition, because the rule involves issues of substantial interest to the public, the FAA determined that the rulemaking is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

Costs. The FAA estimated that the requirements of the final rule, over the 10-year period from 1990 to 1999, will cost approximately $240.3 million in 1987 dollars (an average of $24.0 million per year) or approximately $135.2 million discounted over that 10-year period. The discounted cost includes (rounded to the nearest million) $97.1 million for random testing; $6.2 million for periodic testing, postaccident testing, testing based on reasonable cause, and return-to-duty testing; $8.6 million for preemployment testing; $10.6 million for blind samples submitted to laboratories; $10.3 million for EAP education and training costs; and $2.4 million for costs associated with preparation and submission of an employer's anti-drug program.

Costs of postaccident testing, testing based on reasonable cause, and return-to-duty testing are included as part of periodic testing costs. The FAA used one-half of one percent of the estimated population tested annually as the number that will be tested under one of these three circumstances. The analysis of these costs is set forth in the full Regulatory Impact Analysis (Exhibit A) included in the public docket.

The final rule will affect 149 entities that hold Part 121 certificates, 3,614 entities that hold Part 135 certificates providing scheduled and on-demand service, and contractors who provide services to those certificate holders. The rule also will affect an undetermined number of entities engaged in operations listed in § 135.1(b) for compensation or hire. The FAA has been unable to determine the exact number of these organizations due to the highly diversified and multipurpose nature of their operations. For purposes of analyzing the cost impact of the final rule on these entities, the FAA estimated that approximately 1,500 entities, the same number as repair stations, are engaged in operations listed in § 135.1(b) for compensation or hire. Based on these estimates, the FAA estimated that 538,000 persons will be subject to drug testing in 1991 pursuant to the requirements of the final rule.

The FAA estimated that the cost of an initial screening test for the presence of drugs or drug metabolites will be $25 per test. The FAA expects that 12.5 percent of initial screening tests will require confirmation testing in accordance with the guidelines and standards contained in Appendix I to Part 121. Of the total initial screening tests, 7.5 percent are expected to be confirmed as true positives; 5.0 percent are expected to result in false positive test results after confirmation. The remainder are not expected to be confirmed as positive either because the specimen failed to meet the minimum threshold to be scientifically considered as positive, or because the specimen did not show the presence of drugs or drug metabolites. Confirmation tests are estimated to cost $35 per test. The FAA notes that an employer can realize substantial savings by contracting with a drug testing laboratory for a fixed price that includes the cost of initial screening tests and confirmation tests rather than paying for these tests separately. For example, the Coast Guard currently pays a single, fixed price of $21 for screening tests and any resulting confirmation tests under a single contract with a drug testing laboratory.

The FAA estimated that a screening test will require 15 minutes of a person's time to provide information for chain-of-custody forms and to provide a urine sample for drug testing. Thus, the FAA included a factor equal to 25 percent of an average, fully allocated, hourly wage for each occupational group covered by the final rule. The FAA also assumed that affected persons will provide urine samples for testing while on duty. The FAA included $35 per test as an administrative cost to cover, among other things, collection of specimens, reporting and recordkeeping, and chain-of-custody procedure costs. The FAA recognizes that these costs can vary significantly depending on a number of variables. For example, specimens may be collected in a medical setting (i.e., in a hospital or a clinic, in the presence of medical doctors, nurses, medical technicians). Collection of specimens in a medical setting is not required by this rule. Less expensive settings and nonmedical personnel trained for specimen collection may be used by the aviation industry. Collection sites may be either centrally located or dispersed throughout remote geographical locations. DOT's drug testing program and the FAA's periodic drug testing program illustrate the cost variations associated with specimen collection. DOT uses a contractor to collect specimens at various, dispersed locations throughout the country. DOT pays an average of $123 for each specimen collected. Specimens collected as part of the FAA periodic testing program are collected by aviation medical examiners. Collection costs for periodic tests range from $10 to $45 per specimen. The FAA considered these costs when estimating the administrative costs of the final rule. After consideration of the cost variations, the estimated administrative costs are representative of the costs expected in the aviation industry. The FAA increased the administrative costs contained in the NPRM on the basis of information submitted by commenters. The FAA believes that the aviation industry will find the most economical method of sample collection and will do so at costs that most closely mirror the costs charged to the FAA by aviation medical examiners for collection of specimens for periodic testing.

In the case of most postaccident testing, testing based on reasonable cause, and testing after return to duty triggered by refusal to submit to a test or failure of a previous drug test, the FAA assumed that collection costs for these tests are the same as the collection costs for random tests. However, the FAA assumed that the cost associated with collection of a small percentage of postaccident specimens would be $100 per test. The FAA used this higher figure to address the probability that postaccident specimens may be collected at a remote accident site or a location other than a site that the employer routinely collects specimens. Conversely, specimens collected for testing based on reasonable cause or testing after return to duty could be collected in a central location or at the same location where other specimens are collected pursuant to the requirements of the final rule.

Benefits. The FAA believes that three major benefits will result from the promulgation of the final rule. First, benefits will accrue from the prevention of potential injuries or fatalities and property losses

due to accidents attributed to neglect or error on the part of employees performing sensitive safety- or security-related functions whose motor skills or judgment may be impaired by drugs. Second, benefits will accrue based on the potential reduction in employee absences from work, lost productivity, reduced medical and insurance costs due to on-the-job accidents, and improved general safety in the workplace. Third, broad benefits in the development of air commerce will accrue from projected diminished drug use by commercial aviation employees, thereby increasing public confidence in the commercial aviation transportation industry.

A review of the commercial aviation safety record shows that drug use may have been a cause or factor in only two recent aviation accidents. One accident was in 1983 and involved an all-cargo operation. The second accident was in 1988 and involved a passenger operation. Both accidents have been described previously in this rulemaking document. Drug use has not been established as a definitive causal factor of either accident. In the absence of readily-available statistical data depicting the extent of drug use by employees in commercial aviation and in light of the pernicious effects of drug use, the FAA does not consider the existing safety record to be an exclusive and valid indicator of the threat to aviation safety posed by aviation employee drug use. However, allegations of drug use by the pilot and copilot of Continental Air Express Flight 2286 that crashed on January 19, 1988, killing 9 people, reveal the significant and real potential for fatal aircraft accidents that may be related to the use of drugs in commercial aviation. In light of data regarding drug use by mechanics and repairmen submitted in response to the ANPRM, the FAA also is concerned about the potential for aviation accidents attributable to drug use by commercial aviation maintenance personnel.

The FAA estimates that $84.3 million in discounted benefits would result from promulgation of the final rule if one accident attributed to drug-impaired performance by an individual who performs a sensitive safety- or security-related function in commercial aviation, involving a narrow-body, three-engine, commercial aircraft carrying 133 passengers and 5 crewmembers, is prevented during the 10-year period from 1990 to 1999 (Exhibit E). Although not claimed as a benefit in this Regulatory Impact Analysis, the benefits associated with the prevention of a single accident, during the 10-year period from 1990 to 1999, would be considerably more if the accident involved a 4-engine, wide-body aircraft carrying 289 passengers and 19 crewmembers. In this event, discounted benefits would total $219.9 million.

The FAA also attempted to estimate benefits of the final rule, other than those benefits that may result from the prevention of aircraft accidents, associated with diminished drug use by commercial aviation personnel or any drug-deterrent effect that would result from promulgation of the final rule.

These estimated benefits consist of improved employee productivity as a result of drug use deterrence. A report released in 1987 by the National Institute on Drug Abuse (NIDA), entitled "Strategic Planning for Workplace Drug Abuse Programs," reveals that drug and alcohol abusers are involved in an additional 3.6 more accidents than nonabusers; file 1.5 additional workers' compensation claims than nonabusers; file 2.5 times more often for sick leave of 8 or more consecutive days than nonabusers; and incur 3 times the amount of normal medical costs than nonabusers.

In the absence of pertinent data, the FAA assumed that the rate of drug use by the 538,000 covered aviation personnel is approximately the same as the rate of drug use in the general population (e.g., 10 percent). The FAA also assumed that the productivity of employees who use drugs is 95 percent of the productivity of employees who do not use drugs.

In order to be conservative in estimating the costs of the final rule, the FAA assumed that 7.5 percent of the covered aviation personnel would produce test results that are confirmed positive for prohibited drug use. However, this estimate is premised on testing that produces optimum detection rates and the fact that drug users may continue to use drugs despite implementation of a comprehensive drug testing program that includes unannounced testing based on random selection. Realistically, the FAA expects that testing pursuant to the final rule will not achieve optimum detection rates and that some drug users will cease to use drugs rather than face the consequences of being detected by testing under the final rule.

The FAA hypothesized that 1.0 percent of the affected aviation population will stop using drugs voluntarily in the face of a comprehensive drug testing program. These individuals are expected to continue to perform sensitive safety- or security-related functions without the presence of drugs or drug metabolites in their systems. As noted above, the FAA assumed that drug users are 95 percent effective at their jobs compared to employees who do not use drugs. Thus, the aviation industry would

realize a 5 percent on-the-job productivity increase for each individual who ceases to use drugs. Therefore, the FAA estimated that employee productivity gains of $97.3 million, or $54.3 million discounted over the 10-year period from 1990 to 1999, will accrue to the aviation industry based on the reduction of illegal drug use and increased employee productivity (see Exhibit G).

Benefit/Cost Comparison. The total cost of compliance with the requirements of the final rule is estimated to be $240.3 million in 1987 dollars and $135.2 million, at a present worth discount rate of 10 percent, over the projected 10-year period from 1990 to 1999. The FAA has been unable to quantitatively estimate the accident prevention effectiveness of the final rule. Nevertheless, the FAA believes that drug use, unless stemmed, will continue to pose a threat to aviation safety. The FAA estimates that preventing one accident involving an average size, commercial, passenger aircraft during the 10-year period from 1990 to 1999 would result in discounted benefits of $84.3 million. Likewise, discounted benefits ensuing from increased employee productivity are estimated to be $54.3 million. Thus, total discounted benefits expected to result from promulgation of the final rule amount to $138.6 million. The benefit to cost ratio of the final rule is 1.03.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a Federal agency to review any final rule to assess its impact on small businesses. In consideration of the cost information discussed previously and included in the full Regulatory Impact Analysis, the FAA certifies that the final rule may have a significant negative economic impact on a substantial number of small entities. In an effort to relieve the burden on small entities, the FAA modified the requirements of the final rule and provided alternative schedules and implementation periods directed solely at small aviation entities to provide some measure of relief from the costs associated with the rule. The FAA anticipates that these modifications will reduce burdens associated with the requirements of the final rule on small entities without adversely affecting aviation safety.

International Trade Impact Statement

The final rule will affect only domestic operators and, therefore, will have no impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the United States. It should be noted that, unless compliance with this final rule would violate the domestic laws of policies of a foreign country or a foreign government contends that application of the rule raises questions of compatibility with foreign laws or policies, individuals employed at foreign repair stations under contract to U.S. certificate holders would not be able to perform maintenance or preventive maintenance work on U.S.-registered aircraft unless they participate in an anti-drug program. Thus, foreign repair stations may be effected economically. Likewise, this program also will result in an expense to U.S. certificate holders operating overseas because these entities will be required to establish anti-drug programs, which will not be required of their foreign competitors. The FAA is unable to estimate the possible competitive effect of these costs.

Paperwork Reduction Act Approval

In order to ensure compliance and effectiveness of the final rule, the FAA included necessary reporting and recordkeeping requirements in the provisions of the final rule. The final rule requires employers to maintain records related to employee drug testing and any rehabilitation and to submit periodic, written reports to the FAA that summarize an employer's anti-drug program. In accordance with the Paperwork Reduction Act of 1980, the recordkeeping and reporting requirements of the final rule have been submitted to the Office of Management and Budget (OMB) for approval.

Federalism Implications

The final rule adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule preempts any State or local law that would prohibit or limit drug testing required under the rule. This preemption, under the FAA's statutory authority, is essential to ensure that the safety benefits are obtained throughout the nation's air transportation system. The rule also could have an indirect, economic impact on State and local governments, if persons who lose jobs as a result of a positive drug test require welfare benefits or other public social services. The FAA does not expect this impact to be significant, however. Therefore, in accordance with Executive

Order 12612, the FAA determines that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

CONCLUSION

The final rule requires domestic and supplemental air carriers, commercial operators of large aircraft, air taxi and commuter operators, certain commercial operators, certain contractors to these operators, located in the United States or in a foreign country, and air traffic control facilities not operated by the FAA or the U.S. military to have an anti-drug program for employees who perform, either in the United States or in a foreign country, sensitive safety- or security-related functions. Testing under this final rule will be conducted by an employer prior to employment, periodically, randomly, after an accident, based on reasonable cause, and after an employee returns to duty to perform a sensitive safety- or security-related function for an employer. The final rule also will require that an employer provide EAP education and training services to employees and supervisors. The rule is necessary to prohibit an employee from performing a sensitive safety- or security-related function for an employer while that employee has a prohibited drug in his or her system or if that employee has used drugs as evidenced by a drug test showing the presence of drugs or drug metabolites. The rule is intended to ensure a drug-free aviation workforce and to eliminate drug use and abuse in commercial aviation. The FAA believes that the final rule will reduce the potential for drug-related aviation accidents and will foster identification of commercial aviation employees who use drugs.

Pursuant to the terms of the Regulatory Flexibility Act of 1980, the FAA certifies that the final rule may have a significant negative economic impact on a substantial number of small entities. The final rule will not result in an annual effect on the economy of $100 million or more, but because the requirements of the final rule are important and costly undertakings, the FAA considers the final rule to be a major rule pursuant to the criteria of Executive Order 12291. In addition, the rule involves issues of substantial interest to the public; thus, the FAA determines that the final rule is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

THE RULE

Accordingly, the FAA amends Parts 61, 63, 65, 121, and 135 of the Federal Aviation Regulations (14 CFR Parts 61, 63, 65, 121, and 135) effective December 21, 1988.

The authority citation for Part 65 continues to read as follows:

Authority: 49 U.S.C. 1354, 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

Amendment 65-33

Anti-Drug Program for Personnel Engaged Specified Aviation Activities

Adopted: March 10, 1988 **Effective: April 11, 1989**

(Published in 54 FR 15148, April 14, 1989)

SUMMARY: On November 11, 1988, the FAA issued a final rule requiring specified aviation employers and operators to submit and to implement anti-drug programs for personnel performing sensitive safety- and security-related functions. This final rule extends certain compliance dates and revises the method by which certain entities may be covered by anti-drug programs approved by the FAA. This document also makes minor editorial changes and clarifications to the final anti-drug rule to aid an employer's development of a program and implementation of an approved anti-drug program. These issues were addressed in the prior rulemaking actions that led to promulgation of the final anti-drug rule. This rulemaking action is necessary to facilitate implementation of the final rule issued on November 14, 1988. This rulemaking action is intended to clarify the requirements of the final anti-drug rule and to improve administration of the rule.

EFFECTIVE DATE: This final rule is effective on April 11, 1989. Comments must be received not later than May 15, 1989.

ADDRESS: Send or deliver comments on this notice, in duplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Room 915G, Docket No. 25148, 800 Independence Avenue, SW., Washington, DC 20591. Comments must be marked "Docket No. 25148." Comments may be examined in the Rules Docket between 8:30 a.m. and 5:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Heidi Mayer, Office of Aviation Medicine, Drug Abatement Branch (AAM-220), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3410.

SUPPLEMENTARY INFORMATION:

Comments Invited

The amendments contained in this final rule extend certain compliance dates and revise the procedures by which certain entities may be covered under an anti-drug program. Because these issues were set forth in previous rulemaking actions and interested persons commented on these issues, the amendments are being adopted without prior notice and prior public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, operating administrations of the Department of Transportation (DOT) should provide an opportunity for public comment on regulations issued without prior notice.

Accordingly, interested person are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments must include the regulatory docket number or the amendment number identified in this final rule. Comments also must be submitted in duplicate to the address listed under the caption "ADDRESS" above. All comments received will be available for examination by interested persons in the Rules Docket. These amendments may be changed in light of the comments received on this final rule.

Commenters who want the FAA to acknowledge receipt of comments submitted on this final rule must submit a preaddressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket 25148." The postcard will be date-stamped by the FAA and will be returned to the commenter. A report summarizing each substantive contact with FAA personnel concerned with this rulemaking will be filed in the public docket.

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must include the amendment number identified in this final rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

The rulemaking process that led to promulgation of the final anti-drug regulation began in late 1986. On December 4, 1986, the FAA issued an advance notice of proposed rulemaking (ANPRM)(51 FR 44432; December 9, 1986). The ANPRM invited comment from interested persons on drug and alcohol abuse by personnel in the aviation industry. The ANPRM also solicited comment on the options that the FAA should consider to protect and to maintain aviation safety in light of any drug and alcohol use in the aviation industry.

On March 3, 1988, the FAA issued a notice of proposed rulemaking (NPRM)(53 FR 8368; March 14, 1988) that analyzed the comments submitted on the ANPRM and set forth proposed regulations for comment by interested persons. The FAA received over 900 comments in response to the ANPRM and the NPRM.

The FAA also held three public hearings across the country on the proposed regulations contained in the NPRM. Each hearing was recorded by a court reporter and the hearing transcript was placed in the public docket for the rulemaking.

The FAA issued the final anti-drug rule requiring certain aviation employers and operators to develop and to implement an anti-drug program for employees performing specified aviation activities on November 14, 1988 (53 FR 47024; November 21, 1988). After the final rule was issued, the FAA continued to review the timeframes and implementation schedules contained in the final anti-drug rule. The FAA became aware of various practical implementation questions and issues as a result of the agency's responsibility to provide guidance on rule compliance to the industry. Also, representatives of aviation organizations and employers subject to the final rule expressed concern about certain procedural aspects of the final anti-drug rule. These entities maintain that the timeframes in the final rule for program submission are not realistic in light of the complexities of the final rule and that several detailed requirements of the final rule should be clarified or modified. These basic issues were addressed generally by the commenters in the prior rulemaking action, but the process of actually developing an anti-drug program has increased the awareness of the impact of certain detailed portions of the final rule. Thus, these issues and the concerns expressed to the FAA are not unique nor are they new issues being raised for the first time.

Several issues identified by the FAA are reflected in a formal petition submitted by the Air Transport Association of America (ATA) and the Regional Airline Association (RAA). A copy of the petition is available for review by interested persons in Docket No. 25148. The petitioners jointly request that the FAA extend the effective date of the final rule as it applies to required testing of contract employees. The petitioners suggest that this additional time should be used by the industry and the FAA to fully explore the most effective methods for including contract employees in an anti-drug program. The petitioners ask that the FAA reconsider whether contractors may file their own drug testing plans directly to the FAA for approval. The petitioners also request that the FAA defer testing of employees located outside the territory of the United States indefinitely. Under the final rule, testing outside the United States must be conducted unless it would violate the laws of a foreign country or the foreign government has objected to the application of the final rule within its jurisdiction. The petitioners suggest that testing outside the United States should be suspended until DOT, the Department of State, and foreign governments have considered and discussed the international implications of the final rule.

The amendments contained in this final rule address, among other things, the request of ATA and RAA in their petition to revise the final anti-drug rule. With respect to the issue of testing contractor employees, these amendments, as discussed in more detail below, extend the compliance date for testing contractor employees and permit contractors to submit plans directly to the FAA. Before the rulemaking petition was received, the FAA determined that these amendments were necessary. For this reason,

and because this rulemaking action addresses all issues raised in the petition submitted by ATA and RAA, the FAA determined that publication of the petition in the *Federal Register* is unnecessary and would unduly delay this rulemaking action.

The FAA believes that these actions are fully responsive to the concerns raised in the petition. Nevertheless, the FAA is aware that the industry's experience under this rule may result in the identification of other issues that may need to be addressed to facilitate the effective and efficient implementation of anti-drug programs. The FAA intends to schedule periodic meetings to receive comments and recommendations regarding implementation of the final anti-drug rule. In this regard, representatives of DOT, including personnel from the FAA, have attended several meetings in the past few months sponsored by ATA and RAA to discuss rule implementation issues. Information obtained at future meetings or experience gained by the FAA and the industry may result in further modifications of the final anti-drug rule.

Discussion of the Amendments

The first and most crucial issue being amended by this final rule is extension of the timeframes by which employers must submit an anti-drug plan to the FAA for approval. Representatives of aviation organizations and employers maintain that the administrative and logistical problems related to development and submission of an anti-drug plan are much greater than anticipated. The FAA agrees. In light of the significant amount of work associated with development and planning of an effective and comprehensive anti-drug program, the FAA is convinced that the existing timeframes are unrealistic. The FAA believes that effective implementation of an employer's or an operator's anti-drug program will be much easier if additional time is given to these entities to develop the anti-drug program.

Although the FAA is restructuring the schedule for developing and submitting anti-drug plans to the FAA, the date by which the employer's approved anti-drug program must begin has not been changed. Thus, the date by which drug testing would begin pursuant to the final rule remains the same. The commenters do not express the same concern regarding the date that testing must begin as has been expressed regarding development and submission of an anti-drug plan. The FAA believes that additional time for development of an anti-drug plan that is unique to each affected employer and operator will lead to more effective and more efficient implementation of the anti-drug program.

In this amendment, the FAA is adding 120 days to the time period by which employers and operators must submit an anti-drug plan to the FAA for approval. This amendment correspondingly reduces, by an equivalent time period, the interval between approval of an anti-drug program and implementation of that program. For example, in the final anti-drug rule, Part 121 and large Part 135 certificate holders were given a 120-day period for plan submission and a 180-day period after program approval to implement drug testing, a total of 300 days for these portions of the overall schedule. This amendment provides a 240-day period for program submission and a 60-day period to implement the approved program, or an identical 300-day total period.

As a result of amending the plan submission date for these employers, the interval between program approval and initiation of all types of drug tests is substantially shortened. Hence, the FAA is deleting the requirement that these entities begin preemployment testing not later than 10 days after approval of the employer's anti-drug program by the FAA. These employers now will implement preemployment testing at the same time that all other testing begins as required by the final anti-drug rule (on or about December 16, 1989). This will permit Part 121 and large Part 135 certificate holders to implement their approved anti-drug programs in an efficient and uniform manner.

The FAA is adding a similar extension of time in other sections of the final anti-drug rule that address the dates by which other employers and operators must submit anti-drug plans to the FAA for approval. The amendment correspondingly reduces the interval between program approval and implementation of the program.

The FAA believes that extending the time period by which employers and operators must develop and submit a plan to the FAA for approval will greatly enhance the quality and coverage of an employer's anti-drug program. Yet, at the same time, the goal of implementing a drug testing regimen and providing education and training on drug use and abuse to employees will not be delayed.

In addition to delaying the date by which plans must be submitted to the FAA for approval, the amended schedule creates a distinction with respect to individuals who are directly employed by an affected employer and those employees who provide sensitive safety- or security-related functions pursuant to a contract with the covered employer. The FAA firmly believes that contractor employees performing sensitive safety- or security-related functions for an employer or an operator should be tested. However, the FAA also believes that delaying the date by which testing of these employees must begin would have the salutary effect of allowing employers and operators to gain useful experience in implementing anti-drug programs for their own employees before addressing the added complexity and responsibility of testing contractor employees.

The FAA reconsidered the timeframe for including contractor employees in an employer's anti-drug program and the issue of whether contractors could submit anti-drug plans directly to the FAA for approval. Because of the significant administrative and logistical difficulties associated with including contractor employees in an employer's anti-drug program, the FAA is revising the final rule to give employers additional time regarding testing of contractor employees.

As a result of the amendment, an employer's initial anti-drug program need only specify testing for direct employees of the employer. An employer's anti-drug program must be submitted and testing of the employer's direct employees must begin not later than the dates contained in this final rule. However, testing of contractor employees would not be required until 360 days after testing is initiated for direct employees under that employer's approved anti-drug program. Therefore, Part 121 certificate holders and Part 135 certificate holders employing more than 50 covered employees are permitted to use contractor employees, even if these employees are not covered by an FAA-approved anti-drug program, for an additional 1-year period after initial implementation of the employer's anti-drug program. A similar extension applies in the case of Part 135 certificate holders that employ 11 to 50 covered employees, Part 135 certificate holders that employ 10 or fewer covered employees, and operators as defined in the final anti-drug rule.

Under the provisions of the FAA's final anti-drug rule, contractors were required to come under the "umbrella" of a covered employer's anti-drug program. The NPRM implied that contractors could submit anti-drug plans directly to the FAA for approval. In the final anti-drug rule, that section was amended so that contractors were required to be part of one covered employer's program for whom the contractors provided covered services. However, at both the NPRM and the final rule phases of this rulemaking, the ultimate obligation to ensure that direct or contract employees are part of a drug testing program always has rested with the certificate holder or the operator subject to the final anti-drug rule. At the final rule stage, only the method by which contractor employees would be included in an approved plan was revised. DOT and the FAA are fully aware of the administrative and logistical complexity of this requirement and addresses that issue in this document.

In addition to extending the timeframe for including contractor employees in an approved anti-drug program, the FAA is amending the final anti-drug rule to permit contractors and consortiums (which may be comprised of a combination of contractors, employers, or operators) to submit plans directly to the FAA for approval. These provisions are designed to facilitate implementation of the final anti-drug rule in the area of testing contractor employees and to permit employers and operators subject to the final rule to join together to take advantage of economies of scale. Thus, Appendix I to Part 121 contains a provision that enables repair stations certificated by the FAA to submit anti-drug programs directly to the FAA for approval. The FAA also is including a provision that would enable contractors that do not hold a Part 145 certificate and consortia of contractors or employers to submit a plan directly to the FAA for approval. Unlike certificated repair stations, some companies that provide employees to assist air carriers in the screening of persons and property are not certificated nor regulated directly by the FAA. Similarly, consortia that may develop to help small or remote aviation employers in developing and implementing anti-drug programs are neither certificated nor regulated by the FAA. However, after review of the final anti-drug rule and concerns expressed by the aviation community, the FAA believes that it would be wise to permit these entities to submit plans directly to the FAA for approval. These entities will be permitted to submit anti-drug programs to the FAA on a form and in a manner prescribed by the Administrator so that an appropriate mechanism and procedures can be developed for these types of entities. The FAA is adding a provision to the final anti-drug rule to provide such a mechanism for these entities.

The FAA believes that the delay in requiring contractor employees to be covered will provide sufficient time for many contractors to develop their own comprehensive anti-drug programs. Contractors actually may benefit from this delay since Part 121 and Part 135 certificate holders will have submitted anti-drug programs to the FAA and will have implemented approved anti-drug programs. Aviation contractors will gain valuable experience regarding the development of anti-drug programs and the administrative requirements from employers who have implemented anti-drug programs.

This final rule amendment also addresses the issue of the impact of the final rule on persons outside the United States. Under the terms of the final rule, the appendix is not effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of the appendix raises questions of compatibility with that country's domestic laws or policies.

After the final anti-drug rule was issued, the Department of State sent diplomatic notes to foreign governments regarding the requirements of the final rule. In response, 12 foreign governments objected to the potential impact of the final rule within their jurisdiction and contended that the final rule is incompatible with the foreign country's laws or policies. DOT and the FAA recognize that government-to-government discussion is critical, and has already begun in some cases, to reach permanent resolution of any conflict between the final rule and a foreign country's laws or policies.

In their petition, ATA and RAA state that a foreign country's silence or failure to communicate its objections should not be construed as tacit approval or affirmative consent to the final rule in that country. Because of the added complexity of this rule in an international arena, DOT and the FAA believe that the timeframe set forth in the final rule may be insufficient to ensure that each foreign government understands the significance of the final anti-drug rule and initiates appropriate governmental action to notify the U.S. government of its position regarding the final rule. Neither DOT nor the FAA wish to place a U.S. air carrier in an untenable position while this government-to-government process is developing. Therefore, the FAA is deleting the affirmative obligation for a diplomatic response from a foreign government and is extending the effective date of the final rule, as it may apply outside the territory of the United States, to January 1, 1991. DOT and the FAA believe that this action is necessary to avoid inconsistent or ineffective implementation of the rule by air carriers and to provide additional time for government-to-government discussions in this area. Moreover, the FAA believes that this extension will enable U.S. air carriers to obtain administrative expertise with their domestic anti-drug programs before implementing similar programs, and assuming the significantly greater logistical and administrative burden, of testing covered employees in foreign countries.

The FAA also is making several minor, editorial changes in the final anti-drug rule. These are technical changes to reflect the FAA's original intent regarding the final rule or to correct errors that occasionally occur during a rulemaking project of this magnitude. For example, the term "ground dispatcher" is being deleted from Appendix I to Part 121. That term was intended to ensure that individuals performing aircraft dispatcher duties (e.g., preparation of a dispatch release or document, flight release form, load manifest, or flight plan) would be included in an employer's approved anti-drug program despite the title that was given to that employee or the fact that the employee did or did not hold an aircraft dispatcher certificate issued by the FAA.

The focus of the FAA's final anti-drug rule has always been on the "employer" or "operator." Thus, the provision that specifies sanctions for a certificated employee's refusal to submit to a drug test is amended to delete references to FAA inspectors and law enforcement officers. As amended, the specified sanctions apply only when an employee refuses to submit to a drug test in accordance with the appendix when requested by the employer or operator.

Reason for No Notice and Immediate Adoption

These amendments to the final anti-drug rule are needed immediately to delay the compliance dates specified in the final rule. Under the implementation schedule published in the *Federal Register* on November 21, 1988, certain aviation employers would have been required to submit an anti-drug program to the FAA for approval by April 20, 1989. It is necessary to delay implementation of the final anti-drug rule due to the administrative and logistical problems associate with implementation of comprehensive anti-drug programs. The FAA believes that delay of the date by which plans must be submitted to the FAA, and certain other provisions intended to relieve difficult burdens on employers, will lead to efficient and effective industry anti-drug programs.

For these reasons, notice and public comment procedures are impracticable, unnecessary, and contrary to the public interest. Moreover, the FAA has determined that good cause exists to make this final rule effective in less than 30 days. In accordance with the Regulatory Policies and Procedures of the Department of Transportation, an opportunity for public comment on the final rule is provided.

Economic Assessment

In accordance with the requirements of Executive Order 12291, the FAA reviewed the costs and the benefits of the final anti-drug rule issued on November 14, 1988. At that time, the FAA prepared a comprehensive Regulatory Impact Analysis of the final anti-drug rule. The FAA included that analysis in the public docket. The FAA also summarized and analyzed the comments submitted by interested persons on the economic issues in the final rulemaking document published in the *Federal Register* on November 21, 1988.

This final rule extends certain compliance dates and revises the method by which certain entities may be covered by anti-drug programs approved by the FAA. This document also makes minor editorial changes and clarifications to the final anti-drug rule to aid an employer's development of a program and implementation of an approved anti-drug program. These issues were addressed in the prior rulemaking actions that led to promulgation of the final anti-drug rule. This rulemaking action does not change the basic regulatory structure and requirements promulgated in the final anti-drug rule. Therefore, the FAA anticipates that there would be little or no cost associated with the extension of certain compliance dates and the technical amendments of this final rule. In addition, there would be little or no change in the benefits identified in the final rule. Thus, the FAA has determined that revision of the comprehensive Regulatory Impact Analysis for the final anti-drug rule is not necessary and preparation of a separate economic analysis for this final rule is not warranted.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a Federal agency to review any final rule to assess its impact on small business. The amendments contained in this final rule extend certain compliance dates, provide an additional, but not required, method by which some contractors may submit anti-drug programs directly to the FAA, and make certain editorial or clarifying changes to the final anti-drug rule. In consideration of the nature of these amendments, the FAA has determined that this final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities.

International Trade Impact Statement

This final rule contains an amendment that extends the date by which an employer must ensure that employees outside the United States are in compliance with the final rule issued on November 14, 1988. The amendment provides that Appendix I to Part 121 is not effective with respect to any employee located outside the territory of the United States until January 1, 1991. Thus, the FAA has determined that this final rule will not have an impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the United States.

Paperwork Reduction Act Approval

The recordkeeping and reporting requirements of the final anti-drug rule, issued on November 14, 1988, previously were submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1980. OMB approved those requirements on February 2, 1989. Because this final rule does not amend the recordkeeping and reporting requirements of the final rule, it is not necessary to amend the prior approval received from OMB.

Federalism Implications

The final rule adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA has determined that this final rule does not have sufficient federalism implications to warrant preparation of Federalism Assessment.

Conclusion

This final rule extends certain compliance dates and revises the method by which certain entities may be covered by anti-drug programs approved by the FAA. This document also makes minor editorial changes and clarifications to the final anti-drug rule to aid an employer's development of a program and implementation of an approved anti-drug program. These issues were addressed in the prior rulemaking actions that led to promulgation of the final anti-drug rule. This rulemaking action is necessary to facilitate implementation of the final rule issued on November 14, 1988. This rulemaking action is intended to clarify the requirements of the final anti-drug rule and to improve administration of the rule.

Pursuant to the terms of the Regulatory Flexibility Act of 1980, the FAA certifies that the final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. In addition, the final rule will not result in an annual effect on the economy of $100 million or more and will not result in a significant increase in consumer prices; thus, the final rule is not a major rule pursuant to the criteria of Executive Order 12291. However, because the rule involves issues of substantial interest to the public, the FAA determined that the final rule is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

THE AMENDMENTS

Accordingly, the FAA amends Parts 61, 63, 65, and 121 of the Federal Aviation Regulations (14 CFR Parts 61, 63, 65, and 121) effective April 11, 1989.

The authority citation for Part 65 continues to read as follows:

AUTHORITY: 49 U.S.C. 1354, 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

Amendment 65-34

Revision of General Operating and Flight Rules

Adopted: August 7, 1989 **Effective: August 18, 1990**

(Published in 54 FR 34284, August 18, 1989)

SUMMARY: This amendment reorganizes and realigns the general operating and flight rules to make them more understandable and easier to use. Also, several changes are made to provide more flexibility for certain operations. These changes result from comments received from the general public and aviation industry in response to a request for specific comments to help identify substantive areas needing review.

EFFECTIVE DATE: This amendment becomes effective on August 18, 1990, except that § 91.203(a)(2) becomes effective September 18, 1989, and remains numbered as § 91.27(a)(2) until August 18, 1990.

FOR FURTHER INFORMATION CONTACT: William T. Cook (202) 267-3840 or Edna French (202) 267-8150, Project Development Branch (AFS-850), General Aviation and Commercial Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1978, the Aircraft Owners and Pilots Association (AOPA) petitioned the Federal Aviation Administration (FAA) to revise Part 91 of the Federal Aviation Regulations (FAR) to make the regulations simpler and more comprehensible. In response to this petition, on January 11, 1979, the FAA issued an Advance Notice of Proposed Rulemaking (ANPRM) No. 79-2 (44 FR 4572; January 22, 1979) consisting of a verbatim publication of AOPA's proposal.

The FAA received 106 comments in response to the ANPRM. An overwhelming majority of the commenters supported the intent of the proposal to reorganize Part 91. However, there were numerous problem areas identified by the commenters relating to the proposed changes that were considered substantive.

On November 18, 1980, the FAA formed a Part 91 Working Group to analyze the AOPA proposal and comments received on the ANPRM. It was determined that certain technical and administrative problems existed and that it was not feasible to undertake a substantive revision of Part 91 at that time. Subsequently, AOPA withdrew its petition. However, review of AOPA's proposal to reorganize and renumber Part 91 revealed that many of the changes had merit and could be implemented. The FAA Part 91 Working Group concluded that the reorganization and renumbering of Part 91 would be the first step to improve the regulation and make it more understandable and easier to use. Consequently, the FAA published NPRM No. 79-2A (46 FR 45256; September 10, 1981), which proposed to reorganize and realign the general operating and flight rules to make them more understandable and easier to use. Other proposals were made to delete redundancies and obsolete compliance dates and to make other minor changes.

Notice No. 79-2A did not contain any substantive changes; however, it did inform the public that the FAA considered that notice to be the first step in a regulatory review of Part 91 consistent with the objective of Executive Order 12291. With this in mind, the FAA invited additional specific comments to help identify substantive areas to be reviewed and possibly included in subsequent proposals concerning Part 91. The notice further stated that the FAA would not take final action concerning the reorganization until substantive changes were proposed and the public had been given an opportunity to comment on those proposals.

The FAA published Notice No. 79-2B (46 FR 60461; December 10, 1981) to extend the comment period for Notice No. 79-2A by 120 days. That notice was issued in response to a petition from the National Business Aircraft Association to allow additional time for commenters to prepare substantive comments.

The FAA received 69 comments in response to Notice No. 79-2A. The majority of these comments favored the proposal and were discussed in Notice No. 79-2C (50 FR 11292; March 20, 1985).

Notice 79-2C proposed four substantive changes in addition to the numerous changes made to reorganize and clarify existing rules. Two of these changes were made in response to comments received from the public. These changes are as follows:

(1) Section 91.117—Allows reciprocating-powered aircraft to be operated at 200 knots in an airport traffic area;

(2) Section 91.135—Allows operators desiring authorizations to deviate from positive control area and route segment requirements to utilize a 48-hour oral notification system;

(3) Section 91.409—Allows operators of turbine-powered rotorcraft to use an alternate inspection program, such as an FAA-approved inspection program; and

(4) Sections 91.205, 91.509, and 91.511—Defines "shore" as it is used in these sections to exclude tidal flats.

Public Comments

Forty-seven comments were received in response to Notice No. 79-2C. A number of commenters recommended regulations that were not proposed in the notice. Because such comments discuss matters which the public has not had an opportunity to consider, they are beyond the scope of the notice and cannot be considered without further notice and public participation. Some of these comments concern proposals that will be considered by the FAA in future rulemaking and, therefore, could be published in a future notice.

There were two areas in particular where several proposals were received that are not within the scope of the notice. First, 11 comments specifically request that balloons be excepted from certain requirements now pertaining to aircraft in general. These comments seek substantive change to the existing regulations not proposed in the notice.

Second, a number of commenters propose substantive changes to the regulations with regard to rotorcraft. Although these comments are not within the scope of this rulemaking, they were considered in the Rotorcraft Regulatory Review Program, Notice No. 5.

Two commenters are opposed to changing masculine references to "airman" to read "he or she." One commenter states that this would keep the text shorter and speed up the reading of the text. The other commenter states that § 1.3(a)(3) already provides that "words importing the masculine gender include the feminine," and the better course would be to refer to the "person," or the "pilot." The FAA agrees with these commenters. Accordingly, references throughout Part 91 that use the words "he" or "she" have been changed to refer to the "person," the "pilot," the "crewmember," or the "Administrator."

One commenter writes that the use of "pilot in command" and "PIC" is inconsistent in the proposed rules. The FAA agrees with this commenter and, accordingly, has changed references to "PIC" in §§ 91.123(a) and 91.129(b) to "pilot in command" to make their use consistent throughout Part 91.

A commenter suggests that all references to distances expressed in miles should state whether they are statute or nautical miles. The FAA agrees that such references should be clear. Accordingly, references to distance expressed in miles in §§ 91.171(b)(4)(ii) and 91.207(e)(3) are changed by adding the word "nautical" to reflect that the distances are expressed in nautical miles since they reference ground-measured distance. References to visibilities in §§ 91.155(b), 91.167(b)(2)(ii), and 91.303(e) are changed by adding the word "statute" to reflect that visibilities are expressed in statute miles.

Several commenters state that the proposed wording for § 91.1 implies that operations of moored balloons, kites, unmanned rockets, and unmanned free balloons are governed by Part 103. This comment has merit and § 91.1 is revised by adding a specific reference to Part 101 after the phrase "unmanned free balloons" to make clear that moored balloons, kites, unmanned rockets, and unmanned free balloons operate under Part 101.

Another commenter requests clarification of the discussion of § 91.7 in Notice No. 79-2C, where the FAA states that there is no provision for the use of an approved Minimum Equipment List (MEL) in Part 91 operations, whereas § 91.213 permits the use of an approved MEL. The FAA points out that at the time Notice No. 79-2C was published, the effective date of current § 91.30 (proposed § 91.213) was stayed indefinitely (44 FR 62884; November 1, 1979). Amendment No. 91-192 (50 FR 51188; December 13, 1985) which took effect on March 13, 1986, terminated the stay.

A89042637A

Section 91.7(b), which was proposed without substantive change from existing § 91.29, provides that a flight should be discontinued when unairworthy mechanical or structural conditions occur. One commenter suggests that this be changed by deleting "mechanical or structural" and making it more general so as to provide for a possible unairworthy electrical system. This suggestion raises a valid point; however, the FAA has determined that the rule should be amended to explicitly reference mechanical, electrical, or structural conditions. Therefore, § 91.7(b) is amended accordingly.

As suggested by one commenter, § 91.21(a)(1) is amended by deleting reference to a "commercial operator." This revision conforms § 91.21(a)(1) with SFAR 38-2 and Part 125 which do not provide for a commercial operator's certificate and, instead, provide for the issuance of either an "air carrier operating certificate" or an "operating certificate."

One commenter states that consideration should be given to better defining "appropriately rated pilot" in § 91.109 and provide a definition. The FAA agrees that the phrase "appropriately rated pilot" should be defined better.

The preamble to Amendment No. 91-36 (32 FR 260; January 11, 1967) states that an "appropriately rated pilot" in § 91.21(b) requires a private pilot certificate with an airplane category rating, a multiengine class rating for a small multiengine land plane, and a type rating for a large airplane or a turbojet-powered airplane (large or small).

Accordingly § 91.109(b)(1) is amended to require that the safety pilot hold at least a private pilot certificate with category and class ratings appropriate to the aircraft being flown.

One commenter urges the FAA to reinsert the current rule regarding visual descent points (VDPs) (current § 91.116). VDPs are not an integral part of the approach procedure. An aircraft that is not equipped to identify a VDP has the same approach minima as a similar aircraft that is equipped to identify the VDP.

Mandatory use of VDPs is considered inappropriate for a number of reasons:

(1) VDPs that use Distance Measuring Equipment (DME) fixes may, because of displacement factors and/or fix errors, result in descent angles that are either too shallow or too steep for the approach.

(2) A mandatory VDP rule discourages the purchase and use of the very equipment necessary to identify the VDP. This is so because compliance can only be required of those aircraft that are equipped to identify the VDP.

For these reasons, the final rule, like the NPRM, does not include a mandatory VDP requirement.

Notice No. 79-2C proposed that § 91.175(a) read: "Unless otherwise authorized by ATC, when an instrument letdown to a civil airport is necessary, each person operating an aircraft, except a military aircraft of the United States, shall use a standard instrument approach procedure prescribed for the airport in Part 97 of this chapter." The lead-in clause is changed to read, "Unless otherwise authorized by the Administrator," because ATC does not have the authority to approve a person's non-compliance with this rule.

Several commenters raise objections to proposed § 91.203(a)(2), which would prevent an aircraft from operating outside of the United States under the temporary authority of the pink copy of the Aircraft Registration Application as provided in § 47.31(b). The commenters assert that the proposal is a substantive change and not a clarification of the present rule; and that the FAA should consider the economic impact on the industry, the consumers, and the historical precedence of past practices. These commenters suggest that the FAA withdraw the proposal and acknowledge the pink copy of the application as a temporary certificate of registration.

Another commenter is of the opinion that the FAA has not provided discussion, as required by Executive Order 12291, on the economic impacts that would result from the delay between application for an issuance or denial of the registration certificate, under the proposals, in the NPRM. The commenter maintains that future investment purchases and leases would also be adversely affected. Several commenters also question the regulatory consistency that the FAA claims as the basis for the change.

These comments were responded to in full in a Notice of Legal Opinion issued December 1988 (53 FR 50208; December 14, 1988). That Notice of Legal Opinion stated that the limitation of temporary authority to operate an aircraft without registration to domestic operations (as also provided in new

§ 91.203(a)(2)) reflects current U.S. law and practice. Concerning the economic impact of this ruling, the FAA in that Notice of Legal Opinion answered:

> The aviation community has always been able to transfer ownership and register their aircraft with minimal difficulty. In order to mitigate the potential hardship that could result from grounding an aircraft used in international operations, pending receipt of a registration certificate, the Registry will, upon request, telex a copy of the Certificate of Aircraft Registration to the individual whose name appears on the application as the registered owner of the aircraft. The telex copy is issued after confirmation of the information contained on an Aircraft Registration Application and determination of eligibility for registration. The telex, which reflects critical and verified information resulting from the evaluation by the Registry of an application for aircraft registration, may be used as a temporary Certificate of Aircraft Registration until the original certificate is forwarded for carriage in the aircraft.
>
> This telex certificate will assist owners who submit an application for aircraft registration and who wish to operate the aircraft as soon as possible in international operations. Since the telex, by its terms, is a form of registration certificate, the aircraft may be operated in international air navigation consistent with Article 29 of the Convention [Convention on International Civil Aviation (61 Stat. 1180; T.I.A.S. 1591; 15 U.N.T.S. 295)]. The Registry will telex this copy within a matter of days—often within 48 hours—to be kept in the aircraft until the original Certificate of Aircraft Registration (AC Form 8050-3) is forwarded to the registered owner.

Accordingly, the FAA has determined that the rule should be amended as proposed, and consistent with the Chief Counsel's legal opinion, to provide explicitly that operations of aircraft outside the United States for which an application for registration has been submitted but certificate of registration has not been issued are not authorized under the Federal Aviation Regulations.

Several judicial decisions have defined the "shore" as including tidal flats. In some parts of the United States, these tidal flats can extend for several miles and, because of the extreme tides prevalent in these areas, the land may be submerged under as much as 25 to 35 feet of water during periods of high tide. The intent of the rule is to require operators carrying passengers for hire over these areas to equip their aircraft with the necessary flotation gear and pyrotechnic devices. Therefore, "shore," when it is used in §§ 91.205, 91.509, and 91.511, is defined to exclude land areas, such as tidal flats, which are intermittently under water.

An incorrect reference to "§ 91.169" was used in proposed § 91.409(e), which has been corrected to "§ 91.409" in the final rule.

It was pointed out by several commenters that the word "stop" in § 91.605(c)(2) was inadvertently included in the proposal and should be deleted. The commenters are correct, and the final rule has been amended accordingly. Also, the word "if" following the word "distance" in that same sentence has been corrected to read "is."

In addition to the specific changes discussed above, minor changes have been made in the wording of the regulations proposed in Notice No. 72-2C. In § 91.3(b), the word "in-flight" has been inserted to clarify that the deviation authority of § 91.3 applies only to in-flight emergencies which affect the safe completion of the flight.

The original intent of § 91.3 was to allow the pilot in command to deviate from certain regulations in the event of an in-flight emergency. Over time, regulations involving non-flight items were inserted into Subparts A and B, while flight-related regulations were inserted in other Subparts. Therefore, the word "in-flight" is being added to return the language to its original intent.

Other changes are nonsubstantive in nature. Except for such minor revisions, those parts of the proposal for which there were no comments are adopted as proposed. Finally, all other sections of Part 91 remain unchanged except for renumbering (see the cross-reference lists below).

Several amendments to Part 91 adopted since Notice No. 79-2C were published are reflected in the final rule. Where reference to other sections of this part were set forth in an amendment, the references have been changed to reflect the appropriate sections as used in the final rule. Those required changes published in the Federal Register prior to June 19, 1989, are discussed below.

A890426J7A

Amendment No. 91-188, (50 FR 15380; April 17, 1985) amended current § 91.11, which governs the use of alcohol or drugs by any crewmember performing duty during the operation of an aircraft. This amendment took effect on June 17, 1985. Subsequently, Amendment No. 91-194 (51 FR 1229; January 9, 1986) amended § 91.11(c) to impose a requirement for a crewmember to furnish the results of any test that indicates percentage by weight of alcohol in a crewmember's blood. This amendment took effect on April 9, 1986. Proposed § 91.17 has been revised accordingly.

Amendment No. 91-189 (50 FR 31588; August 5, 1985) removed references to "expect approach clearance time" in § 91.127. This amendment took effect on September 4, 1985. Section 91.185 reflects this amendment.

Amendment No. 91-190 (50 FR 45602; November 1, 1985) added a new paragraph (c) to current § 91.24. This amendment took effect on December 2, 1985. This new paragraph required all aircraft equipped with an operable radar beacon transponder be turned on while airborne in controlled airspace. Subsequently, § 91.24(c) was amended by Amendment No. 91-203 (53 FR 23374; June 21, 1988). Proposed § 91.215(c) has been redesignated as paragraph (d) and the changes brought about by Amendment Nos. 91-190 and 91-203 have been incorporated into revised § 91.215(c).

Amendment No. 91-191 (50 FR 46877; November 13, 1985) amended current § 91.14 (proposed § 91.107) by revising the title and the section to include reference to shoulder harnesses. This amendment took effect on December 12, 1985. Section 91.107 has been revised accordingly. Amendment No. 91-191 also added a new paragraph to current § 91.33 which requires a shoulder harness for specified seats in normal, utility, and acrobatic category airplanes with a seating configuration, excluding pilot seats, of nine or less, manufactured after December 12, 1986. This paragraph appears as § 91.205(b)(15).

Amendment No. 91-192 (50 FR 51189; December 13, 1985) terminated the suspension of Amendment No. 91-157 (44 FR 43714; July 26, 1979) staying the effective date of current § 91.30. This amendment took effect on March 31, 1986. Subsequently, Amendment No. 206 (53 FR 50195; December 13, 1988) amended § 91.30. Section 91.213 reflects these amendments.

Amendment No. 91-193 (50 FR 51193; December 13, 1985) changed the FAA's description of North Atlantic (NAT) Minimum Navigation Performance Specifications (MNPS) airspace to coincide with the International Civil Aviation Organization's (ICAO's) description of the NAT MNPS airspace. This has been reflected accordingly in Section 1 of Appendix C of this final rule.

Amendment No. 91-195 (51 FR 31098; September 2, 1986) corrects the reference to the Department of Defense office in current § 91.102 restricting the flight of aircraft near space flight operations. This amendment took effect on September 15, 1986. Section 91.143 reflects this amendment.

Amendment No. 91-196 (51 FR 40692; November 7, 1986) upgraded rotorcraft certification and operational requirements, thus effecting amendments to several FARs. This amendment took effect on January 6, 1987. Current § 91.2 was amended to afford small helicopter operators the opportunity to apply for Category II instrument approach authorization. Proposed § 91.193 has been revised accordingly. Current § 91.23 was amended to reduce the IFR reserve fuel requirement for helicopters from 45 to 30 minutes. Proposed § 91.167 has been amended to reflect this change. Current § 91.116 (proposed § 91.175) was amended to establish a separate takeoff minimum for helicopters under IFR, of one-half mile visibility. Current § 91.171 was amended to include helicopters in the altimeter system and altitude reporting equipment tests and inspection requirements. Proposed § 91.411 has been amended to reflect this change. In order to enable rotorcraft to perform Category II operations, Amendment No. 91-196 also amended Appendix A in Part 91 by removing the word "airplane" and replacing it with the word "aircraft" wherever it appears.

Amendment No. 91-197 (52 FR 1836; January 15, 1987) revises the authority citation for Part 91 and adds a new paragraph to current § 91.213 which states that a commuter category airplane must have a pilot designated as second in command, unless the airplane has a passenger seating configuration, excluding pilot seats, of nine or less seats, and is type certificated for operations with one pilot. This amendment took effect on February 17, 1987. This rule now appears as § 91.531(a)(3).

Amendment No. 91-198, (52 FR 3391; February 3, 1987) amended current § 91.24(a) and (b) on ATC transponder and altitude reporting equipment and use. This amendment took effect on April 6, 1987. Subsequently, Amendment No. 91-203 (53 FR 23374; June 21, 1988) amended § 91.24(b) and (c) and Amendment No. 91-210 (54 FR 25682; June 16, 1989) revised § 91.24(a).

Proposed § 91.215 has been revised accordingly. Amendment No. 91-198 also revised paragraph (b)(2)(iii) of current § 91.90 to allow operations conducted prior to December 1, 1987, in Group II TCAs, to be exempt from the new equipment requirements of current § 91.24. Amendment No. 91-203 (53 FR 23374; June 21, 1988) subsequently revised § 91.90, effective July 21, 1988. Amendment No. 91-205 (53 FR 40323; October 14, 1988) further revised § 91.90 in its entirety effective January 12, 1989. Amendment No. 90-209 (54 FR 24883; June 9, 1989) amended § 91.90 by delaying the effective date of the section for helicopter operations. The rule, covering all amendments to date, appears in this revision as § 91.131.

Amendment No. 91-199, (52 FR 9636; March 25, 1987) amended current § 91.35 by renumbering the paragraphs and adding a new paragraph that requires any operator who has installed approved flight recorders and approved cockpit voice recorders to keep the recorded information for at least 60 days, or longer, if requested by the Administrator or the National Transportation Safety Board. This amendment took effect on May 26, 1987. The amended rule now appears as § 91.609.

Amendment No. 91-200, (52 FR 17277; May 6, 1987) amended current § 91.173 by requiring each registered aircraft owner or operator to keep "preventive maintenance" records as well as maintenance, alteration, and records of the 100-hour annual, progressive, and other required or approved inspections, as appropriate, for each engine, propeller, rotor, and appliance of an aircraft. This amendment took effect on June 5, 1987. This amended rule now appears as § 91.417(a)(1).

Amendment No. 91-201, (52 FR 20028; May 26, 1987) adds the reference to Part 129 to the exception in current § 91.161(b) from the requirements of §§ 91.165, 91.169, 91.171, 91.173, and 91.174 for aircraft maintained in accordance with a continuous maintenance program as provided for in Part 129. The amendment took effect on August 25, 1987. This amended rule now appears as § 91.401(b).

Amendment No. 91-202, (52 FR 34102; September 9, 1987 and 52 FR 35234; September 18, 1987) amended current § 91.27 on civil aircraft certification requirements by adding a new paragraph (c) to require that a copy of the form which authorized the alteration of an aircraft with fuel tanks within the passenger or a baggage compartment be kept on board the modified aircraft. This new rule now appears as § 91.203(c). Current § 91.173 on maintenance records was revised by requiring that such records be made available to the Administrator or an authorized representative of the National Transportation Safety Board and when such a fuel tank is installed as set forth in § 91.35 as amended pursuant to Part 43, a copy of the FAA Form 337 be kept on board the modified aircraft. This new rule appears as § 91.417(b) and (c). This amendment took effect on December 8, 1987.

Amendment No. 91-203, (53 FR 23374; June 21, 1988, 53 FR 25050; July 1, 1988, and 53 FR 26592; July 14, 1988) amended or revised § 91.24 (ATC transponder and altitude reporting equipment and use), 91.88 (Airport radar service areas), and 91.90 (Terminal control areas), and by adding a new Appendix D entitled "Airports/Locations Where the Transponder Requirements of § 91.24(b)(5)(ii) Apply," regarding use of transponders with automatic altitude reporting. This amendment took effect on July 21, 1988. Amendment No. 91-205 (53 FR 40323; October 14, 1988) revised § 91.90 in its entirety effective January 12, 1989. Amendment No. 91-209 (54 FR 24883; June 9, 1989) amended § 91.90 by delaying the effective date of the section for helicopter operations. These rules now appear in this revision as §§ 91.215, 91.130, 91.131, and new Appendix D to Part 91, respectively.

Amendment No. 91-204, (53 FR 26145; July 11, 1988) amended current § 91.35 on flight recorders and cockpit voice recorders to require digital flight recorders and voice recorders to be installed on selected aircraft operated in general aviation. The specifications for such recorders are set forth in a new Appendix E to Part 91 for airplanes and in a new Appendix F to Part 91 for helicopters. The amendment is reflected as § 91.609(b), (c), (d), and (e), and new Appendixes E and F to Part 91. This amendment becomes effective on October 11, 1991.

Amendment No. 91-205 (53 FR 40323; October 14, 1988) revised the classification and pilot and equipment requirements for conducting operations in terminal control areas (TCA's) by amending § 91.90 to establish a single-class TCA; require the pilot-in-command of a civil aircraft to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and, to eliminate the helicopter exception from the minimum equipment requirement. The amendment was effective on January 12, 1989. Subsequently, Amendment No. 91-209 (54 FR 24883; June 9, 1989) amended § 91.90(c)(1) by delaying the application of the section for helicopter operations for one year. Revised § 91.131 covers these amendments.

Amendment No. 91-206 (53 FR 50195; December 13, 1988) amended § 91.30 to permit rotorcraft, nonturbine-powered airplanes, gliders, and lighter-than-air aircraft, for which an approved Master Minimum Equipment List has not been developed, to be operated with inoperative instruments and equipment not essential for the safe operation of the aircraft. The amendment also permits general aviation operators of small rotorcraft, nonturbine-powered small airplanes, gliders, and lighter-than-air aircraft for which a Master Minimum Equipment List has been developed, the option of operating under the minimum equipment list concept, or under other conditions as set forth in the amendment. Amendment No. 91-206 also amended § 91.165 to require that any inoperative instrument or item of equipment permitted to be inoperative under the new amended § 91.30 to be repaired, replaced, removed, or inspected at the next required inspection for the aircraft. These amendments became effective on December 13, 1988, and appear as §§ 91.213 and 91.405 of this revision to Part 91.

Amendment No. 91-207 (54 FR 265; January 4, 1989) amended §§ 91.1 and 91.61 to extend the controlled airspace and the applicability of certain air traffic rules to coincide with presidential action to extend the territorial sea of the United States for international purposes, from 3 to 12 nautical miles from the U.S. coast. This amendment became effective on December 27, 1988. These amended rules now appear as §§ 91.1 and 91.101.

Amendment No. 91-208 (54 FR 950; January 10, 1989) added a new § 91.26 to require that any traffic alert and collision avoidance system installed in a U.S. registered civil aircraft must be approved by the Administrator, and if installed, must be on and operating during the aircraft's operation. The amendment became effective on February 9, 1989. The amendment appears herein as §§ 91.221.

Amendment No. 91-209 (54 FR 24883; June 9, 1989) delays the effective date of certain navigational equipment requirements of helicopter operations in a Terminal Control Area (TCA) by the amendment of § 91.90(c)(1). The amendment became effective on June 6, 1989. Section 91.131 covers this amendment.

Amendment No. 91-210 (54 FR 25682; June 16, 1989), effective June 16, 1989, amended § 91.24(a) to allow certain aircraft operators to install non-Mode S transponders in aircraft until July 1, 1992, instead of until January 1, 1992, provided that such transponders are manufactured prior to January 1, 1991, instead of prior to January 1, 1990. This amendment appears as § 91.215(a).

References to Part 91 found in other sections of the Federal Aviation Regulations have also been amended to incorporate the revised numbering of Part 91. These miscellaneous amendments are found at the end of the amendments to Part 91.

Furthermore, §§ 91.615 through 91.645 as identified in Notice No. 79-2C (50 FR 11292; March 20, 1985) now appear in this final rule as §§ 91.503 through 91.533.

Regulatory Evaluation

FAA analysis indicates that these amendments will not have a significant impact on the public or any level of government on an annual basis. The final rule includes changes to clarify the existing rules by simplifying the language, deleting obsolete requirements, consolidating similar regulations, updating equipment requirements to reflect the state-of-the-art, and relaxing certain operating and flight rule requirements.

Benefits

Section 91.117 allows reciprocating-powered aircraft to be operated in an airport traffic area at indicated airspeeds not greater than 200 knots. The FAA is unable to determine operator time and fuel cost savings because they will largely depend on the type of aircraft involved, desired speed, and weather and traffic conditions. The aggregate annual cost savings to these operators will not be significant because: 1) the normal cruise speed for most single engine reciprocating-powered aircraft does not exceed 156 knots, and 2) pilots of most multiengine reciprocating-powered aircraft, while operating within an airport traffic area, will not exceed the normal aircraft cruising speed which is not significantly greater than 156 knots in many of these aircraft.

Section 91.135 provides for a 2-day advance oral notification for submitting requests for authorizations to deviate from positive control area and route segment requirements. The old rule required a 4-day advance written notification of the proposed operation to ATC. A request for an authorization to deviate from these requirements is an infrequent occurrence. Consequently, the new rule will have minor benefits in terms of cost savings.

Sections 91.205, 91.509, and 91.511 clarify the definition of "shore" as that area of land adjacent to the water which is above the high water mark, thereby excluding tidal flats. From a safety standpoint, a tidal area covered with water is not as safe an emergency landing place as a dry shoreline. The main benefit is improved survivability from accidents in areas where for-hire operators may not be in compliance with the intent of the present rule. There is insufficient information in accident records to be able to estimate how many deaths could have been avoided through the use of life jackets and pyrotechnic signaling devices in these instances.

Costs

Any cost associated with defining "shore" in § 91.205 as the high water line is expected to be negligible. The only parties potentially affected are small for-hire operators who do not comply with the obvious intention of the rule as presently worded. The FAA believes these operators are very few (probably less than 20 operators) in number. Such operators are likely to be traversing tidal flats in areas like Alaska. If such operators do not comply with the rule as written now, then the cost of compliance would be a maximum of about $105 per year per aircraft. This assumes a $50 cost for an approved flotation device per seat and a flotation device useful life of 5 years ($10 per passenger seat per year), 10 seats per aircraft for these specific operators, plus $5 per year per aircraft for a pyrotechnic signaling device.

Section 91.409 allows operators of turbine-powered rotorcraft to use alternate inspection programs such as inspections under an FAA-approved continuous airworthiness maintenance program. The operators may now schedule inspections in a manner that allows the highest level of utilization of their rotorcraft.

The FAA estimates that in 1984 there were approximately 3,000 active turbine-powered rotorcraft in non-air taxi use. The FAA assumes that about one-half of the operators of these aircraft would use the new inspection options.

The value of using these options is difficult to estimate. At a minimum, the major effect of this proposed rule would be one additional day per year of rotorcraft utility. The usefulness of this can be set at least at the cost of capital for 1 day. Using an average aircraft value of $300,000 and a use of 250 days per year, the cost of capital can be estimated at $180 per day ($300,000 at 15 percent interest divided by 250 days). Thus, the minimum benefit is approximately $0.27 million per year (half the fleet, 1500 turbine-powered rotorcraft times $180). As the fleet grows, the value of this benefit also increases.

Because of the reorganization and resulting renumbering of provisions, persons who regularly refer to existing Part 91 must familiarize themselves with the new structure. It is also recognized that many non-regulatory materials containing references to present Part 91 sections may have to be modified. To assist in reference to the new provisions, a redesignation table, similar to the cross-reference table published herein, will be included in subsequent editions of the Code of Federal Regulations. The FAA believes that any short-term costs associated with transition to the reorganized Part 91 will be outweighed by the benefits inherent in a more logically organized set of regulations.

Trade Impact

The FAA has determined that this regulation will have no impact on international trade.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress in order to insure, among other things, that small entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities." As discussed above, the regulatory evaluation for Part 91 indicates that there are no negative or significant economic impacts associated with the proposed rule.

All but four of the changes to Part 91 are editorial or clarifying changes. Three of the four changes result only in minimal benefits being applied. The other is a change to § 91.205 which, while it is basically clarifying, may involve some minimal cost and benefit. Any economic impact would be minor— approximately $100 per aircraft per year, and would affect only a few small for-hire operators

in Alaska who do not comply with the intent of the rule as presently worded. Thus, the change could not be construed to cause "significant economic impact on a substantial number" of small entities within the meaning of the RFA. Therefore, this rule will not have a significant economic impact on a substantial number of small entities.

Conclusion

The FAA has determined that this document is not considered major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It causes only four minor changes, three of which will provide benefits with no additional costs to the aviation public. The fourth will impose negligible costs which are substantially outweighed by the benefits provided. Other amendments provide general benefits by deleting obsolete requirements, relaxing certain operating and flight rule requirements, and updating and clarifying the text. Under the provisions of Executive Order 12291, the amendments in this final rule will not have a major economic effect on consumers; industries; Federal, State, or local government agencies; or geographic regions. There will be no significant effects on competition, employment, investment, productivity, innovations, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or import markets. It is certified that under the criteria of the Regulatory Flexibility Act this final rule will not have a significant economic impact on a substantial number of small entities. A copy of the full economic evaluation is filed in the public docket and may be obtained by contacting the person listed in the "FOR FURTHER INFORMATION CONTACT" paragraph of this document.

CROSS REFERENCE

To identify where present regulations are relocated in the new rule, the following cross-reference lists are provided:

Cross Reference Table

Old Section	*New Section*	*Old Section*	*New Section*
91.1	91.1 and 91.703	91.30	91.213
91.2	91.193	91.31	91.9
91.3	91.3	91.32	91.211
91.4	91.5	91.33	91.205
91.5	91.103	91.34	91.191
91.6	91.189	91.35	91.609
91.7	91.105	91.36	91.217
91.8	91.11	91.37	91.605
91.9	91.13	91.38	91.323
91.10	91.13	91.39	91.313
91.11	91.17	91.40	91.315
91.12	91.19	91.41	91.317
91.13	91.15	91.42	91.319
91.14	91.107	91.43	91.711
91.15	91.307	91.45	91.611
91.17	91.309	91.47	91.607
91.18	91.311	91.49	91.603
91.19	91.21	91.50	Deleted
91.20	91.705	91.51	91.219
91.21	91.109	91.52	91.207
91.22	91.151	91.53	Deleted
91.23	91.167	91.54	91.23
91.24	91.215	91.55	91.817
91.25	91.171	91.56	91.815
91.26	91.221	91.57	91.25
91.27	91.203	91.58	91.613
91.28	91.715	91.59	91.321
91.29	91.7	91.61	91.101

Old Section	*New Section*
91.63	91.903
91.65	91.111 and 91.123
91.67	91.113
91.69	91.115
91.70	91.117
91.71	91.303
91.73	91.209
91.75	91.123
91.77	91.125
91.79	91.119
91.81	91.121
91.83	91.153 and 91.169
91.84	91.707
91.85	91.127
91.87	91.129
91.88	91.130
91.89	91.127
91.90	91.131
91.91	91.137
91.93	91.305
91.95	91.133
91.97	91.135
91.100	91.139
91.101	91.709
91.102	91.143
91.103	91.713
91.104	91.141
91.105	91.155
91.107	91.157
91.109	91.159
91.115	91.173
91.116	91.175
91.117	Deleted
91.119	91.177
91.121	91.179
91.123	91.181
91.125	91.183
91.127	91.185
91.129	91.187
91.161	91.401
91.163	91.403
91.165	91.405
91.167	91.407
91.169	91.409
91.170	91.415
91.171	91.411
91.172	91.413
91.173	91.417
91.174	91.419
91.175	91.421
91.181	91.501
91.183	91.503
91.185	91.505
91.187	91.507
91.189	91.509
91.191	91.511
91.193	91.513
91.195	91.515
91.197	91.517
91.199	91.519
91.200	91.521
91.201	91.523
91.203	91.525
91.205	Deleted
91.207	Deleted
91.209	91.527
91.211	91.529
91.213	91.531
91.215	91.533
91.301	91.801
91.302	91.803
91.303	91.805
91.305	91.807
91.306	91.809
91.307	91.811
91.308	91.813
91.309	91.819
91.311	91.821
Appendix A	Appendix A
Appendix B	Appendix B
Appendix C	Appendix C
Appendix D	Appendix D
Appendix E	Appendix E
Appendix F	Appendix F

Cross Reference Table

New Section	*Old Section*
91.1	91.1
91.3	91.3
91.5	91.4
91.7	91.29
91.9	91.31
91.11	91.8
91.13	91.9 and 91.10
91.15	91.13
91.17	91.11
91.19	91.12
91.21	91.19
91.23	91.54
91.25	91.57
91.101	91.61
91.103	91.5
91.105	91.7
91.107	91.14
91.109	91.21
91.111	91.65
91.113	91.67
91.115	91.69
91.117	91.70
91.119	91.79
91.121	91.81
91.123	91.75 and 91.65
91.125	91.77

Cross Reference Table—Continued

New Section	*Old Section*
91.127	91.85 and 91.89
91.129	91.87
91.130	91.88
91.131	91.90
91.133	91.95
91.135	91.97
91.137	91.91
91.139	91.100
91.141	91.104
91.143	91.102
91.151	91.22
91.153	91.83
91.155	91.105
91.157	91.107
91.159	91.109
91.167	91.23
91.169	91.83
91.171	91.25
91.173	91.115
91.175	91.116
91.177	91.119
91.179	91.121
91.181	91.123
91.183	91.125
91.185	91.127
91.187	91.129
91.189	91.6
91.191	91.34
91.193	91.2
91.201	New
91.203	91.27
91.205	91.33
91.207	91.52
91.209	91.73
91.211	91.32
91.213	91.30
91.215	91.24
91.217	91.36
91.219	91.51
91.221	91.26
91.301	New
91.303	91.71
91.305	91.93
91.307	91.15
91.309	91.17
91.311	91.18
91.313	91.39
91.315	91.40
91.317	91.41
91.319	91.42
91.321	91.59
91.323	91.38
91.401	91.161
91.403	91.163
91.405	91.165
91.407	91.167
91.409	91.169
91.411	91.171
91.413	91.172
91.415	91.170
91.417	91.173
91.419	91.174
91.421	91.175
91.501	91.181
91.503	91.183
91.505	91.185
91.507	91.187
91.509	91.189
91.511	91.191
91.513	91.193
91.515	91.195
91.517	91.197
91.519	91.199
91.521	91.200
91.523	91.201
91.525	91.203
91.527	91.209
91.529	91.211
91.531	91.213
91.533	91.215
91.601	New
91.603	91.49
91.605	91.37
91.607	91.47
91.609	91.35
91.611	91.45
91.613	91.58
91.701	New
91.703	91.1
91.705	91.20
91.707	91.84
91.709	91.101
91.711	91.43
91.713	91.103
91.715	91.28
91.801	91.301
91.803	91.302
91.805	91.303
91.807	91.305
91.809	91.306
91.811	91.307
91.813	91.308
91.815	91.56
91.817	91.55
91.819	91.309
91.821	91.311
91.901	New
91.903	91.63
91.905	New
Appendix A	Appendix A
Appendix B	Appendix B
Appendix C	Appendix C
Appendix D	Appendix D
Appendix E	Appendix E
Appendix F	Appendix F

Newly Established Rules

91.201	91.701
91.301	91.901
91.601	91.905

THE RULE

For the reasons set forth above, Part 91 of the Federal Aviation Regulations (14 CFR Part 91) is revised and Parts 1, 21, 23, 25, 27, 31, 33, 35, 36, 43, 45, 47, 61, 63, 65, 71, 93, 99, 103, 121, 125, 127, 133, 135, 137, and 141 of the Federal Aviation Regulations (14 CFR Parts 1, 21, 23, 25, 27, 31, 33, 35, 36, 43, 45, 47, 61, 63, 65, 71, 93, 99, 103, 121, 125, 127, 133, 135, 137, and 141) are amended effective August 18, 1990.

The authority citation for Part 65 continues to read as follows:

Authority: 49 U.S.C. 1354, 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Amendment 65-35

Organizational Changes and Delegations of Authority

Adopted: September 15, 1989 **Effective: October 25, 1989**

(Published in 54 FR 39288, September 25, 1989)

SUMMARY: This amendment adopts changes to office titles and certain terminology in the regulations that were affected by a recent agencywide reorganization. These changes are being made to reflect delegations of authority that were changed, as well as offices that were renamed or abolished and replaced with new office designations. These changes are necessary to make the regulations consistent with the current agency structure.

FOR FURTHER INFORMATION CONTACT: Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; Telephone (202) 267-9683.

SUPPLEMENTARY INFORMATION

Background

On July 1, 1988, the FAA underwent a far-reaching reorganization that affected both headquarters and regional offices. The most significant change is that certain Regional Divisions and Offices, which formerly reported to the Regional Director, are now under "straight line" authority, meaning that these units within each Regional Office report to the appropriate Associate Administrator (or Chief Counsel) in charge of the function performed by that unit.

Within Part 11 of the Federal Aviation Regulations (FAR), various elements of the FAA have been delegated rulemaking authority by the Administrator. These delegations need to be updated. In addition, throughout the Federal Aviation Regulations references are made to offices that have been renamed or are no longer in existence as a result of reorganization.

Title 14 of the Code of Federal Regulations must therefore be amended to reflect the reorganizations and changes that have taken place.

Paperwork Reduction Act

The paperwork requirements in sections being amended by this document have already been approved. There will be no increase or decrease in paperwork requirements as a result of these amendments, since the changes are completely editorial in nature.

Good Cause Justifioation for Immediate Adoption

This amendment is needed to avoid possible confusion about the FAA reorganization and to hasten the effective implementation of the reorganization. In view of the need to expedite these changes, and because the amendment is editorial in nature and would impose no additional burden on the public, I find that notice and opportunity for public comment before adopting this amendment is unnecessary.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the National government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures

(44 FR 11034; February 26, 1979); and because it is of editorial nature, no impact is expected to result and a full regulatory evaluation is not required. In addition, the FAA certifies that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

THE RULE

In consideration of the foregoing, the Federal Aviation Administration amends the Federal Aviation Regulations (14 CFR Chapter I) effective October 25, 1989.

The authority citation for Part 65 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Part 65—Certification: Airmen Other Than Flight Crewmembers

Subpart A—General

§ 65.1 Applicability.

This part prescribes the requirements for issuing the following certificates and associated ratings and the general operating rules for the holders of those certificates and ratings:

(a) Air traffic control tower operators.

(b) Aircraft dispatchers.

(c) Mechanics.

(d) Repairmen.

(e) Parachute riggers.

§ 65.3 Certification of foreign airmen other than flight crewmembers.

A person who is neither a U.S. citizen nor a resident alien is issued a certificate under Subpart D of this part, outside the United States, only when the Administrator finds that the certificate is needed for the operation or continued airworthiness of a U.S.-registered civil aircraft.

§ 65.11 Application and issue.

(a) Application for a certificate and appropriate class rating, or for an additional rating, under this part must be made on a form and in a manner prescribed by the Administrator. Each person who is neither a U.S. citizen nor a resident alien and who applies for a written or practical test to be administered outside the United States or for any certificate or rating issued under this part must show evidence that the fee prescribed in Appendix A of Part 187 of this chapter has been paid.

(b) An applicant who meets the requirements of this part is entitled to an appropriate certificate and rating.

(c) Unless authorized by the Administrator, a person whose air traffic control tower operator, mechanic, or parachute rigger certificate is suspended may not apply for any rating to be added to that certificate during the period of suspension.

(d) Unless the order of revocation provides otherwise—

(1) A person whose air traffic control tower operator, aircraft dispatcher, or parachute rigger certificate is revoked may not apply for the same kind of certificate for one year after the date of revocation; and

(2) A person whose mechanic or repairman certificate is revoked may not apply for either of those kinds of certificates for one year after the date of revocation.

§ 65.12 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of final conviction; or

(2) Suspension or revocation of any certificate or rating issued under this part.

(b) The commission of an act prohibited by [§ 91.19(a)] of this chapter is grounds for—

(1) Denial of an application for a certificate or rating issued under this part for a period of up to 1 year after the date of that act; or

(2) Suspension or revocation of any certificate or rating issued under this part.

§ 65.13 Temporary certificate.

A certificate and ratings effective for a period of not more than 120 days may be issued to a qualified applicant, pending review of his ap-

plication and supplementary documents and the issue of the certificate and ratings for which he applied.

65.15 Duration of certificates.

(a) Except for repairman certificates, a certificate or rating issued under this Part is effective until it is surrendered, suspended, or revoked.

(b) Unless it is sooner surrendered, suspended, or revoked, a repairman certificate is effective until the holder is relieved from the duties for which the holder was employed and certificated.

(c) The holder of a certificate issued under this Part that is suspended, revoked, or no longer effective shall return it to the Administrator.

§ 65.15a [Reserved]

§ 65.16 Change of name; replacement of lost or destroyed certificate.

(a) An application for a change of name on a certificate issued under this Part must be accompanied by the applicant's current certificate and the marriage license, court order, or other document verifying the change. The documents are returned to the applicant after inspection.

(b) An application for a replacement of a lost or destroyed certificate is made by letter to the Department of Transportation, Federal Aviation Administration, Airman Certification Branch, P.O. Box 25082, Oklahoma City, Okla. 73125. The letter must—

(1) Contain the name in which the certificate was issued, the permanent mailing address (including zip code), social security number (if any), and date and place of birth of the certificate holder, and any available information regarding the grade, number, and date of issue of the certificate, and the ratings on it; and

(2) Be accompanied by a check or money order for $2.00, payable to the Federal Aviation Administration.

(c) An application for a replacement of a lost or destroyed medical certificate is made byletter to the Department of Transportation, Federal Aviation Administration, Civil Aeromedical Institute, Aeromedical Certification Branch, P.O. Box 25082, Oklahoma City, Okla. 73125, accompanied by a check or money order for $2.00.

(d) A person whose certificate issued under this Part or medical certificate, or both, has been lost may obtain a telegram from the FAA confirming that it was issued. The telegram may be carried as a certificate for a period not to exceed 60 days pending his receiving a duplicate certificate under paragraph (b) or (c) of this section, unless he has been notified that the certificate has been suspended or revoked. The request for such a telegram may be made by prepaid telegram, stating the date upon which a duplicate certificate was requested, or including the request for a duplicate and a money order for the necessary amount. The request for a telegraphic certificate should be sent to the office prescribed in paragraph (b) or (c) of this section, as appropriate. However, a request for both at the same time should be sent to the office prescribed in paragraph (b) of this section.

§ 65.17 Tests: general procedure.

(a) Tests prescribed by or under this Part are given at times and places, and by persons, designated by the Administrator.

(b) The minimum passing grade for each test is 70 percent.

§ 65.18 Written tests: cheating or other unauthorized conduct.

(a) Except as authorized by the Administrator, no person may—

(1) Copy, or intentionally remove, a written test under this Part;

(2) Give to another, or receive from another, any part or copy of that test;

(3) Give help on that test to, or receive help on that test from, any person during the period that test is being given;

(4) Take any part of that test in behalf of another person;

(5) Use any material or aid during the period that test is being given; or

(6) Intentionally cause, assist, or participate in any act prohibited by this paragraph.

(b) No person who commits an act prohibited by paragraph (a) of this section is eligible for any airman or ground instructor

certificate or rating under this chapter for a period of one year after the date of that act. In addition, the commission of that act is a basis for suspending or revoking any airman or ground instructor certificate or rating held by that person.

§ 65.19 Retesting after failure.

An applicant for a written, oral, or practical test for a certificate and rating, or for an additional rating under this part, may apply for retesting—

(a) After 30 days after the date the applicant failed the test; or

(b) Before the 30 days have expired if the applicant presents a signed statement from an airman holding the certificate and rating sought by the applicant, certifying that the airman has given the applicant additional instruction in each of the subjects failed and that the airman considers the applicant ready for retesting.

§ 65.20 Applications, certificates, logbooks, reports, and records: falsification, reproduction, or alteration.

(a) No person may make or cause to be made—

(1) Any fraudulent or intentionally false statement on any application for a certificate or rating under this part;

(2) Any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used, to show compliance with any requirement for any certificate or rating under this part;

(3) Any reproduction, for fraudulent purpose, of any certificate or rating under this part; or

(4) Any alteration of any certificate or rating under this part.

(b) The commission by any person of an act prohibited under paragraph (a) of this section is a basis for suspending or revoking any airman or ground instructor certificate or rating held by that person.

§ 65.21 Change of address.

Within 30 days after any change in his permanent mailing address, the holder of a certificate issued under this part shall notify the Department of Transportation, Federal Aviation Administration, Airman Certification Branch, P.O. Box 25082, Oklahoma City, Okla. 73125 in writing, of his new address.

§ 65.23 Refusal to submit to a drug test.

(a) This section applies to—

(1) An employee who performs a function listed in Appendix I to Part 121 of this chapter for a Part 121 certificate holder or a Part 135 certificate holder;

(2) An employee who performs a function listed in Appendix I to Part 121 of this chapter for an operator as defined in § 135.1(c) of this chapter. An employee of a person conducting operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to Section 405(h) of the Federal Aviation Act of 1958 is excluded from the requirements of this section; and

(3) An employee of an air traffic control facility not operated by, or under contract with, the FAA or the U.S. military.

[(b) Refusal by the holder of a certificate issued under this part to take a test for a drug specified in Appendix I to Part 121 of this chapter, when requested by an employer as defined in that appendix or an opertator as defined in § 135.1(c) of this chapter, under the circumstances specified in that appendix, is grounds for—]

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of that refusal; and

(2) Suspension or revocation of any certificate or rating issued under this part.

Subpart B—Air Traffic Control Tower Operators

§ 65.31 Required certificates, and rating or qualification.

No person may act as an air traffic control tower operator at an air traffic control tower in connection with civil aircraft unless he—

(a) Holds an air traffic control tower operator certificate issued to him under this subpart;

(b) Holds a facility rating for that control tower issued to him under this subpart, or has qualified for the operating position at which he acts and is under the supervision of the holder of a facility rating for that control tower;

For the purpose of this subpart, "operating position" means an air traffic control function performed within or directly associated with the control tower; and

(c) Except for a person employed by the FAA or employed by, or on active duty with, the Department of the Air Force, Army, or Navy or the Coast Guard, holds at least a second-class medical certificate issued under Part 67 of this chapter.

§ 65.33 Eligibility requirements: general.

To be eligible for an air traffic control tower operator certificate, a person must—

(a) Be at least 18 years of age;

(b) Be of good moral character;

(c) Be able to read, write, and understand the English language and speak it without accent or impediment of speech that would interfere with 2-way radio conversation;

(d) Except for a person employed by the FAA or employed by, or on active duty with, the Department of the Air Force, Army, or Navy or the Coast Guard, hold at least a second-class medical certificate issued under Part 67 of this chapter since the beginning of the 12th calendar month before the date the application is made.

(e) Comply with § 65.35.

§ 65.35 Knowledge requirements.

Each applicant for an air traffic control tower operator certificate must pass a written test on—

(a) The flight rules in Part 91 of this chapter;

(b) Airport traffic control procedures, and this subpart;

(c) En route traffic control procedures;

(d) Communications operating procedures;

(e) Flight assistance service;

(f) Air navigation, and aids to air navigation; and

(g) Aviation weather.

§ 65.37 Skill requirements: operating positions.

No person may act as an air traffic control tower operator at any operating position unless he has passed a practical test on—

(a) Control tower equipment and its use;

(b) Weather reporting procedures and use of reports;

(c) Notices to Airmen, and use of the Airman's Information Manual;

(d) Use of operational forms;

(e) Performance of noncontrol operational duties; and

(f) Each of the following procedures that is applicable to that operating position and is required by the person examining him:

(1) The airport, including rules, equipment, runways, taxiways, and obstructions.

(2) The control zone, including terrain features, visual checkpoints, and obstructions.

(3) Traffic patterns and associated procedures for use of preferential runways and noise abatement.

(4) Operational agreements.

(5) The center, alternate airports, and those airways, routes, reporting points, and air navigation aids used for terminal air traffic control.

(6) Search and rescue procedures.

(7) Terminal air traffic control procedures and phraseology.

(8) Holding procedures, prescribed instrument approach, and departure procedures.

(9) Radar alignment and technical operation.

(10) The application of the prescribed radar and nonradar separation standard, as appropriate.

§ 65.39 Practical experience requirements; facility rating.

Each applicant for a facility rating at any air traffic control tower must have satisfactorily served—

(a) As an air traffic control tower operator at that control tower without a facility rating for at least 6 months; or

(b) As an air traffic control tower operator with a facility rating at a different control tower for at least 6 months before the date he applies for the rating.

However, an applicant who is a member of an Armed Force of the United States meets the requirements of this section if he has satisfactorily served as an air traffic control tower operator for at least 6 months.

§ 65.41 Skill requirements: facility ratings.

Each applicant for a facility rating at an air traffic control tower must have passed a practical test on each item listed in § 65.37 of this part that is applicable to each operating position at the control tower at which the rating is sought.

§ 65.43 Rating privileges and exchange.

(a) The holder of a senior rating on August 31, 1970, may at any time after that date exchange his rating for a facility rating at the same air traffic control tower. However, if he does not do so before August 31, 1971, he may not thereafter exercise the privileges of his senior rating at the control tower concerned until he makes the exchange.

(b) The holder of a junior rating on August 31, 1970, may not control air traffic, at any operating position at the control tower concerned, until he has met the applicable requirements of § 65.37 of this part. However, before meeting those requirements he may control air traffic under the supervision, where required, of an operator with a senior rating (or facility rating) in accordance with § 65.41 of this part in effect before August 31, 1970.

§ 65.45 Performance of duties.

(a) An air traffic control tower operator shall perform his duties in accordance with the limitations on his certificate and the procedures and practices prescribed in air traffic control manuals of the FAA, to provide for the safe, orderly, and expeditious flow of air traffic.

(b) An operator with a facility rating may control traffic at any operating position at the control tower at which he holds a facility rating. However, he may not issue an air traffic clearance for IFR flight without authorization from the appropriate facility exercising IFR control at that location.

(c) An operator who does not hold a facility rating for a particular control tower may act at each operating position for which he has qualified, under the supervision of an operator holding a facility rating for that control tower.

[§ 65.46 Use of prohibited drugs.]

[(a) The following definitions apply for the purposes of this section:

[(1) An "employee" is a person who performs an air traffic control function for an employer. For the purpose of this section, a person who performs such a function pursuant to a contract with an employer is considered to be performing that function for the employer.

[(2) An "employer" means an air traffic control facility not operated by, or under contract with, the FAA or the U.S. military that employs a person to perform an air traffic control function.

[(b) Each employer shall provide each employee performing a function listed in Appendix I to Part 121 of this chapter and his or her supervisor with the training specified in that appendix. No employer may use any contractor to perform an air traffic control function unless that contractor provides each of its employees performing that function for the employer and his or her supervisor with the training specified in that appendix.

[(c) No employer may knowingly use any person to perform, nor may any person perform for an employer, either directly or by contract, any air traffic control function while that person has a prohibited drug, as defined in Appendix I to the Part 121 of this chapter, in his or her system.

[(d) Except as provided in paragraph (e) of this section, no employer may knowingly use any person to perform, nor may any person perform for an employer, either directly or by contract, any air traffic control function if that person failed a test or refused to submit to a test required by Appendix I to Part 121 of

this chapter given by a certificate holder, by an employer, or by an operator as defined in § 135.1(c) of this chapter.

[(e) Paragraph (d) of this section does not apply to a person who has received a recommendation to be hired or to return to duty from a medical review officer in accordance with Appendix I to Part 121 of this chapter or who has received a special issuance medical certificate after evaluation by the Federal Air Surgeon for drug dependency in accordance with Part 67 of this chapter.

[(f) Each employer shall test each of its employees who performs any air traffic control function in accordance with Appendix I to Part 121 of this chapter. No employer may use any contractor to perform any air traffic control function unless that contractor tests each employee performing such a function for the employer in accordance with that appendix.]

§ 65.47 Maximum hours.

Except in an emergency, a certificated air traffic control tower operator must be relieved of all duties for at least 24 consecutive hours at least once during each 7 consecutive days. Such an operator may not serve or be required to serve—

(a) For more than 10 consecutive hours; or

(b) For more than 10 hours during a period of 24 consecutive hours, unless he has had a rest period of at least 8 hours at or before the end of the 10 hours of duty.

§ 65.49 General operating rules

(a) Except for a person employed by the FAA or employed by, or on active duty with, the Department of the Air Force, Army, or Navy, or the Coast Guard, no person may act as an air traffic control tower operator under a certificate issued to him or her under this part unless he or she has in his or her personal possession an appropriate current medical certificate issued under Part 67 of this chapter.

(b) Each person holding an air traffic control tower operator certificate shall keep it readily available when performing duties in an air traffic control tower, and shall present that certificate or his medical certificate or both for inspection upon the request of the Administrator or an authorized representative of the National Transportation Safety Board, or of any Federal, State, or local law enforcement officer.

(c) A certificated air traffic control tower operator who does not hold a facility rating for a particular control tower may not act at any operating position at the control tower concerned unless there is maintained at that control tower, readily available to persons named in paragraph (b), a current record of the operating positions at which he has qualified.

(d) An air traffic control tower operator may not perform duties under his certificate during any period of known physical deficiency that would make him unable to meet the physical requirements for his current medical certificate. However, if the deficiency is temporary, he may perform duties that are not affected by it whenever another certificated and qualified operator is present and on duty.

(e) A certificated air traffic control tower operator may not control air traffic with equipment that the Administrator has found to be inadequate.

(f) The holder of an air traffic control tower operator certificate, or an applicant for one, shall, upon the reasonable request of the Administrator, cooperate fully in any test that is made of him.

§ 65.50 Currency requirements.

The holder of an air traffic control tower operator certificate may not perform any duties under that certificate unless—

(a) He has served for at least 3 of the preceding 6 months as an air traffic control tower operator at the control tower to which his facility rating applies, or at the operating positions for which he has qualified; or

(b) He has shown that he meets the requirements for his certificate and facility rating at the control tower concerned, or for operating at positions for which he has previously qualified.

Subpart C—Aircraft Dispatchers

§ 65.51 Certificate required.

(a) No person may serve as an aircraft dispatcher (exercising responsibility with the pilot in command in the operational control

of a flight) in connection with any civil aircraft in air commerce unless he has in his personal possession a current aircraft dispatcher certificate issued under this subpart.

(b) Each person who holds an aircraft dispatcher certificate shall present it for inspection upon the request of the Administrator or an authorized representative of the National Transportation Safety Board, or of any Federal, State, or local law enforcement officer.

§ 65.53 Eligibility requirements: general.

To be eligible for an aircraft dispatcher certificate, a person must—

(a) Be at least 23 years of age;

(b) Be able to read, speak, and understand the English language, or have an appropriate limitation placed on his certificate;

(c) Comply with §§ 65.55, 65.57, and 65.59.

§ 65.55 Knowledge requirements.

(a) An applicant for an aircraft dispatcher certificate must pass a written test on—

(1) The regulations of this chapter that apply to the duties of an aircraft dispatcher;

(2) The general system of collecting and disseminating weather information;

(3) Interpreting aviation weather reports, including abbreviations and symbols, as prescribed in "National Weather Service Federal Meteorological Handbook No. 1," as amended;

(4) The fundamentals of meteorology as applied to aircraft operations, particularly as to—

(i) Surface and upper air weather maps and general characteristics of air masses, pressure systems, and frontal systems, including their symbols and nomenclature;

(ii) Cloud forms and their significance; and

(iii) Icing, turbulence, thunderstorms, fog and low ceilings, winds aloft, pressure pattern flying, the influence of terrain on meteorological conditions, and general principles of forecasting and analysis;

(5) Principles of aircraft navigation with particular respect to instrument operation and procedures;

(6) Communications facilities and procedures;

(7) Air navigation facilities and procedures; and

(8) Air traffic control procedures.

(b) A report of the test is sent to the applicant. A passing grade is evidence, for a period of 24 months after the date the test is given, that the applicant has complied with this section.

§ 65.57 Experience requirements.

An applicant for an aircraft dispatcher certificate must present documentary evidence satisfactory to the Administrator that he has the experience prescribed in any one of the following paragraphs:

(a) A total of at least 2 of the 3 years before the date he applies, in scheduled air carrier operations, scheduled military aviation operations, or other aircraft operations that the Administrator finds provides equivalent experience—

(1) As a pilot member of a flight crew;

(2) As a flight radio operator or ground radio operator;

(3) As a flight navigator;

(4) As a meteorologist;

INTENTIONALLY LEFT BLANK

(5) Performing the duties of an aircraft dispatcher or his assistant; or

(6) Performing other duties that the Administrator finds provide equivalent experience.

(b) A total of at least 2 of the 3 years before the date he applies, as an air route traffic controller or a certificated air traffic control tower operator.

(c) A total of at least 1 of the 2 years before the date he applies, as an assistant in dispatching scheduled air carrier aircraft performing the duties of an aircraft dispatcher under the direct supervision of a certificated dispatcher.

(d) Within 90 days before the date he applies, successful completion of a course of instruction approved by the Administrator as adequate for the training of an aircraft dispatcher.

An applicant is entitled to credit any combination of experience in paragraph (a), or paragraphs (a) and (b), of this section, if the aggregate of that experience is at least 2 years.

§ 65.59 Skill requirements.

An applicant for an aircraft dispatcher certificate must pass a practical test—

(a) With respect to any one type of large aircraft used in air carrier operations, on—

(1) Weight and balance limitations;

(2) Performance operating limitations;

(3) Using cruise control charts;

(4) Fuel and oil capacities and rates of consumption; and

(5) Using the operations manual;

(b) On the characteristics of air routes and airports with particular reference to—

(1) Landing areas;

(2) Lighting facilities; and

(3) Approach and landing facilities and procedures;

(c) On the use and limitations of sensitive-type altimeters;

(d) On applying available weather forecasts and reports to determine whether a flight can be made safely;

(e) On using the *Airman's Guide* and the *Flight Information Manual;*

(f) On dispatching and assisting a flight under adverse weather conditions; and

(g) On emergency procedures.

§ 65.61 Aircraft dispatcher courses.

An applicant for approval of an aircraft dispatcher course shall submit a letter to the Administrator requesting approval, and shall also submit three copies of the course outline, a description of his equipment and facilities and a list of the instructors and their qualifications. Requirements for the course and the outline are set forth in Appendix A to this Part.

Subpart D—Mechanics

§ 65.71 Eligibility requirements: general.

(a) To be eligible for a mechanic certificate and associated ratings, a person must—

(1) Be at least 18 years of age;

(2) Be able to read, write, speak, and understand the English language, or in the case of an applicant who does not meet this requirement and who is employed outside of the United States by a U.S. air carrier, have his certificate endorsed "Valid only outside the United States";

(3) Have passed all of the prescribed tests within a period of 24 months; and

(4) Comply with the sections of this subpart that apply to the rating he seeks.

(b) A certificated mechanic who applies for an additional rating must meet the requirements of § 65.77 and, within a period of 24 months, pass the tests prescribed by §§ 65.75 and 65.79 for the additional rating sought.

§ 65.73 Ratings.

(a) The following ratings are issued under this subpart:

(1) Airframe.

(2) Powerplant.

(b) A mechanic certificate with an aircraft or aircraft engine rating, or both, that was issued before, and was valid on, June 15, 1952,

is equal to a mechanic certificate with an airframe or powerplant rating, or both, as the case may be, and may be exchanged for such a corresponding certificate and rating or ratings.

§ 65.75 Knowledge requirements.

(a) Each applicant for a mechanic certificate or rating must, after meeting the applicable experience requirements of § 65.77, pass a written test covering the construction and maintenance of aircraft appropriate to the rating he seeks, the regulations in this subpart, and the applicable provisions of Parts 43 and 91 of this chapter. The basic principles covering the installation and maintenance of propellers are included in the powerplant test.

(b) The applicant must pass each section of the test before applying for the oral and practical tests prescribed by § 65.79. A report of the written test is sent to the applicant.

§ 65.77 Experience requirements.

Each applicant for a mechanic certificate or rating must present either an appropriate graduation certificate or certificate of completion from a certificated aviation maintenance technician school or documentary evidence, satisfactory to the Administrator, of—

(a) At least 18 months of practical experience with the procedures, practices, materials, tools, machine tools, and equipment generally used in constructing, maintaining, or altering airframes, or powerplants appropriate to the rating sought; or

(b) At least 30 months of practical experience concurrently performing the duties appropriate to both the airframe and powerplant ratings.

§ 65.79 Skill requirements.

Each applicant for a mechanic certificate or rating must pass an oral and a practical test on the rating he seeks. The tests cover the applicant's basic skill in performing practical projects on the subjects covered by the written test for that rating. An applicant for a powerplant rating must show his ability to make satisfactory minor repairs to, and minor alterations of, propellers.

§ 65.80 Certificated aviation maintenance technician school students.

Whenever an aviation maintenance technician school certificated under Part 147 of this chapter shows to an FAA inspector that any of its students has made satisfactory progress at the school and is prepared to take the oral and practical tests prescribed by § 65.79, that student may take those tests during the final subjects of his training in the approved curriculum, before he meets the applicable experience requirements of § 65.77 and before he passes each section of the written test prescribed by § 65.75.

§ 65.81 General privileges and limitations.

(a) A certificated mechanic may perform or supervise the maintenance [,preventive maintenance,] or alteration of an aircraft or appliance, or a part thereof, for which he is rated (but excluding major repairs to, and major alterations of, propellers, and any repair to, or alteration of, instruments), and may perform additional duties in accordance with §§ 65.85, 65.87, and 65.95. However, he may not supervise the maintenance [,preventive maintenance] or alteration of, or approve and return to service, any aircraft or appliance, or part thereof, for which he is rated unless he has satisfactorily performed the work concerned at an earlier date. If he has not so performed that work at an earlier date, he may show his ability to do it by performing it to the satisfaction of the Administrator or under the direct supervision of a certificated and appropriately rated mechanic, or a certificated repairman, who has had previous experience in the specific operation concerned.

(b) A certificated mechanic may not exercise the privileges of his certificate and rating unless he understands the current instructions of the manufacturer, and the maintenance manuals, for the specific operation concerned.

§ 65.83 Recent experience requirements.

A certificated mechanic may not exercise the privileges of his certificate and rating unless, within the preceding 24 months—

(a) The Administrator has found that he is able to do that work; or

(b) He has, for at least 6 months—

(1) Served as a mechanic under his certificate and rating;

(2) Technically supervised other mechanics;

(3) Supervised, in an executive capacity, the maintenance or alteration of aircraft; or

(4) Been engaged in any combination of subparagraphs (1), (2), or (3) of this paragraph.

§ 65.85 Airframe rating: additional privileges.

A certificated mechanic with an airframe rating may approve and return to service an airframe, or any related part or appliance, after he has performed, supervised, or inspected its maintenance or alteration (excluding major repairs and major alterations). In addition, he may perform the 100-hour inspection required by Part 91 of this chapter on an airframe, or any related part or appliance, and approve and return it to service.

§ 65.87 Powerplant rating: additional privileges.

A certificated mechanic with a powerplant rating may approve and return to service a powerplant or propeller or any related part or appliance, after he has performed, supervised, or inspected its maintenance or alteration (excluding major repairs and major alterations). In addition, he may perform the 100-hour inspection required by Part 91 of this chapter on a powerplant or propeller, or any part thereof, and approve and return it to service.

§ 65.89 Display of certificate.

Each person who holds a mechanic certificate shall keep it within the immediate area where he normally exercises the privileges of the certificate and shall present it for inspection upon request of the Administrator or an authorized representative of the National Transportation Safety Board, or of any Federal, State, or local law enforcement officer.

§ 65.91 Inspection authorization.

(a) An application for an inspection authorization is made on a form and in a manner prescribed by the Administrator.

(b) An applicant who meets the requirements of this section is entitled to an inspection authorization.

(c) To be eligible for an inspection authorization, an applicant must—

[(1) Hold a currently effective mechanic certificate with both an airframe rating and a powerplant rating, each of which is currently effective and has been in effect for a total of at least 3 years;]

(2) Have been actively engaged, for at least the 2-year period before the date he applies, in maintaining aircraft certificated and maintained in accordance with this chapter;

(3) Have a fixed base of operations at which he may be located in person or by telephone during a normal working week, but it need not be the place where he will exercise his inspection authority;

(4) Have available to him the equipment, facilities, and inspection data necessary to properly inspect airframes, powerplants, propellers, or any related part or appliance; and

(5) Pass a written test on his ability to inspect according to safety standards for returning aircraft to service after major repairs and major alterations and annual and progressive inspection performed under Part 43 of this chapter.

An applicant who fails the test prescribed in subparagraph (5) of this paragraph may not apply for retesting until at least 90 days after the date he failed the test.

(d) [Reserved]

§ 65.92 Inspection authorization: duration.

(a) Each inspection authorization expires on March 31 of each year. However, the holder may exercise the privileges of that authorization only while he holds a currently effective mechanic certificate with both a currently effective airframe rating and a currently effective powerplant rating.

(b) An inspection authorization ceases to be effective whenever any of the following occurs:

(1) The authorization is surrendered, suspended, or revoked.

(2) The holder no longer has a fixed base of operation.

(3) The holder no longer has the equipment, facilities, and inspection data required by § 65.91(c)(3) and (4) for issuance of his authorization.

(c) The holder of an inspection authorization that is suspended or revoked shall, upon the Administrator's request, return it to the Administrator.

§ 65.93 Inspection authorization: renewal.

(a) To be eligible for renewal of an inspection authorization for a 1-year period an applicant must present evidence annually, during the month of March, at an FAA [Flight Standards District Office], or an International Field Office that the applicant still meets the requirements of § 65.91(c)(1) through (4) and must show that, during the current period that the applicant held the inspection authorization, the applicant—

(1) Has performed at least one annual inspection for each 90 days that the applicant held the current authority; or

(2) Has performed inspections of at least two major repairs or major alterations for each 90 days that the applicant held the current authority; or

(3) Has performed or supervised and approved at least one progressive inspection in accordance with standards prescribed by the Administrator; or

(4) Has attended and successfully completed a refresher course, acceptable to the Administrator, of not less than 8 hours of instruction during the 12-month period preceding the application for renewal; or

(5) Has passed an oral test by an FAA inspector to determine that the applicant's knowledge of applicable regulations and standards is current.

(b) The holder of an inspection authorization that has been in effect for less than 90 days before the expiration date need not comply with paragraphs (a)(1) through (5) of this section.

§ 65.95 Inspection authorization: privileges and limitations.

(a) The holder of an inspection authorization may—

(1) Inspect and approve for return to service any aircraft or related part or appliance (except any aircraft maintained in accordance with a continuous airworthiness program under Part 121 or 127 of this chapter) after a major repair or major alteration to it in accordance with Part 43 of this chapter, if the work was done in accordance with technical data approved by the Administrator.

(2) Perform an annual, or perform or supervise a progressive inspection according to §§ 43.13 and 43.15 of this chapter.

(b) When he exercises the privileges of an inspection authorization the holder shall keep it available for inspection by the aircraft owner, the mechanic submitting the aircraft, repair, or alteration for approval (if any), and shall present it upon the request of the Administrator or an authorized representative of the National Transportation Safety Board, or of any Federal, State, or local law enforcement officer.

(c) If the holder of an inspection authorization changes his fixed base of operation, he may not exercise the privileges of the authorization until he has notified the FAA [Flight Standards] District Office or International Field Office for the area in which the new base is located, in writing, of the change.

Subpart E—Repairmen

§ 65.101 Eligibility requirements: general.

(a) To be eligible for a repairman certificate a person must—

(1) Be at least 18 years of age;

(2) Be specially qualified to perform maintenance on aircraft or components

*U.S. GOVERNMENT PRINTING OFFICE:1989-261-336:00069

thereof, appropriate to the job for which he is employed;

(3) Be employed for a specific job requiring those special qualifications by a certificated repair station, or by a certificated commercial operator or certificated air carrier, that is required by its operating certificate or approved operations specification to provide a continuous airworthiness maintenance program according to its maintenance manuals;

(4) Be recommended for certification by his employer, to the satisfaction of the Administrator, as able to satisfactorily maintain aircraft or components, appropriate to the job for which he is employed;

[(5) Have either—

[(i) At least 18 months of practical experience in the procedures, practices, inspection methods, materials, tools, machine tools, and equipment generally used in the maintenance duties of the specific job for which the person is to be employed and certificated; or

[(ii) Completed formal training that is acceptable to the Administrator and is specifically designed to qualify the applicant for the job on which the applicant is to be employed; and]

(6) Be able to read, write, speak, and understand the English language, or, in the case of an applicant who does not meet this requirement and who is employed outside the United States by a certificated repair station, a certificated U.S. commercial operator, or a certificated U.S. air carrier, described in paragraph (c) of this section, have his certificate endorsed "Valid only outside the United States."

(b) This section does not apply to the issuance of repairman certificates (experimental aircraft builder) under § 65.104.

INTENTIONALLY LEFT BLANK

§ 65.103 Repairman certificate: privileges and limitations.

(a) A certificated repairman may perform or supervise the maintenance, preventive maintenance, or alteration of aircraft or aircraft components appropriate to the job for which the repairman was employed and certificated, but only in connection with duties for the certificate holder by whom the repairman was employed and recommended.

(b) A certificated repairman may not perform or supervise duties under the repairman certificate unless the repairman understands the current instructions of the certificate holder by whom the repairman is employed and the manufacturer's instructions for continued airworthiness relating to the specific operations concerned.

§ 65.104 Repairman certificate (experimental aircraft builder)—eligibility, privileges and limitations.

(a) To be eligible for a repairman certificate (experimental aircraft builder), an individual must—

(1) Be at least 18 years of age;

(2) Be the primary builder of the aircraft to which the privileges of the certificate are applicable;

(3) Show to the satisfaction of the Administrator that the individual has the requisite skill to determine whether the aircraft is in a condition for safe operations; and

(4) Be a citizen of the United States or an individual citizen of a foreign country who has lawfully been admitted for permanent residence in the United States.

(b) The holder of a repairman certificate (experimental aircraft builder) may perform condition inspections on the aircraft constructed by the holder in accordance with the operating limitations of that aircraft.

(c) Section 65.103 does not apply to the holder of a repairman certificate (experimental aircraft builder) while performing under that certificate.

§ 65.105 Display of certificate.

Each person who holds a repairman certificate shall keep it within the immediate area where he normally exercises the privileges of the certificate and shall present it for inspection upon the request of the Adminstrator or an authorized representative of the National Transportation Safety Board, or of any Federal, State, or local law enforcement officer.

Subpart F—Parachute Riggers

§ 65.111 Certificate required.

(a) No person may pack, maintain, or alter any personnel-carrying parachute intended for emergency use in connection with civil aircraft of the United States (including the auxiliary parachute of a dual parachute pack to be used for intentional jumping) unless he holds an appropriate current certificate and type rating issued under this subpart and complies with §§ 65.127 through 65.133.

(b) No person may pack, maintain, or alter any main parachute of a dual parachute pack

to be used for intentional jumping in connection with civil aircraft of the United States unless he has an appropriate current certificate issued under this subpart. However, a person who does not hold such a certificate may pack the main parachute of a dual parachute pack that is to be used by him for intentional jumping.

(c) Each person who holds a parachute rigger certificate shall present it for inspection upon the request of the Administrator or an authorized representative of the National Transportation Safety Board, or of any Federal, State, or local law enforcemen officer.

(d) The following parachute rigger certificates are issued under this Part:

(1) Senior parachute rigger.

(2) Master parachute rigger.

(e) Sections 65.127 through 65.133 do not apply to parachutes packed, maintained, or altered for the use of the Armed Forces.

§ 65.113 Eligibility requirements: general.

(a) To be eligible for a parachute rigger certificate, a person must—

(1) Be at least 18 years of age;

(2) Be able to read, write, speak, and understand the English language, or in the case of a citizen of Puerto Rico, or a person who is employed outside of the United States by a U.S. air carrier, and who does not meet this requirement, be issued a certificate that is valid only in Puerto Rico or while he is employed outside of the United States by that air carrier, as the case may be; and

(3) Comply with the sections of this subpart that apply to the certificate and type rating he seeks.

(b) Except for a master parachute rigger certificate, a parachute rigger certificate that was issued before, and was valid on, October 31, 1962, is equal to a senior parachute rigger certificate, and may be exchanged for such a corresponding certificate.

§ 65.115 Senior parachute rigger certificate: experience, knowledge, and skill requirements.

Except as provided in § 65.117, an applicant for a senior parachute rigger certificate must—

(a) Present evidence satisfactory to the Administrator that he has packed at least 20 parachutes of each type for which he seeks a rating, in accordance with the manufacturer's instructions and under the supervision of a certificated parachute rigger holding a rating for that type or a person holding an appropriate military rating;

(b) Pass a written test, with respect to parachutes in common use, on—

(1) Their construction, packing, and maintenance;

(2) The manufacturer's instructions;

(3) The regulations of this subpart; and

(c) Pass an oral and practical test showing his ability to pack and maintain at least one type of parachute in common use, appropriate to the type rating he seeks.

§ 65.117 Military riggers or former military riggers: special certification rule.

In place of the procedure in § 65.115, an applicant for a senior parachute rigger certificate is entitled to it if he passes a written test on the regulations of this subpart and presents satisfactory documentary evidence that he—

(a) Is a member or civilian employee of an Armed Force of the United States, is a civilian employee of a regular armed force of a foreign country, or has, within the 12 months before he applies, been honorably discharged or released from any status covered by this paragraph;

(b) Is serving, or has served within the 12 months before he applies, as a parachute rigger for such an Armed Force; and

(c) Has the experience required by § 65.115 (a).

§ 65.119 Master parachute rigger certificate: experience, knowledge, and skill requirements.

An applicant for a master parachute rigger certificate must meet the following requirements:

(a) Present evidence satisfactory to the Administrator that he has had at least 3 years of experience as a parachute rigger and has satisfactorily packed at least 100 parachutes of each of two types in common use, in accordance with the manufacturer's instructions—

(1) While a certificated and appropriately rated senior parachute rigger; or

(2) While under the supervision of a certificated and appropriately rated para-

chute rigger or a person holding appropriate military ratings.

An applicant may combine experience specified in subparagraphs (1) and (2) of this paragraph to meet the requirements of this paragraph.

(b) If the applicant is not the holder of a senior parachute rigger certificate, pass a written test, with respect to parachutes in common use, on—

(1) Their construction, packing, and maintenance;

(2) The manufacturer's instructions; and

(3) The regulations of this subpart.

(c) Pass an oral and practical test showing his ability to pack and maintain two types of parachutes in common use, appropriate to the type of ratings he seeks.

§ 65.121 Type ratings.

(a) The following type ratings are issued under this subpart:

(1) Seat.
(2) Back.
(3) Chest.
(4) Lap.

(b) The holder of a senior parachute rigger certificate who qualifies for a master parachute rigger certificate is entitled to have placed on his master parachute rigger certificate the ratings that were on his senior parachute rigger certificate.

§ 65.123 Additional type ratings: requirements.

A certificated parachute rigger who applies for an additional type rating must—

(a) Present evidence satisfactory to the Administrator that he has packed at least 20 parachutes of the type for which he seeks a rating, in accordance with the manufacturer's instructions and under the supervision of a certificated parachute rigger holding a rating for that type or a person holding an appropriate military rating; and

(b) Pass a practical test, to the satisfaction of the Administrator, showing his ability to pack and maintain the type of parachute for which he seeks a rating.

§ 65.125 Certificates: privileges.

(a) A certificated senior parachute rigger may—

(1) Pack or maintain (except for major repair) any type of parachute for which he is rated; and

(2) Supervise other persons in packing any type of parachute for which he is rated.

(b) A certificated master parachute rigger may—

(1) Pack, maintain, or alter any type of parachute for which he is rated; and

(2) Supervise other persons in packing, maintaining, or altering any type of parachute for which he is rated.

(c) A certificated parachute rigger need not comply with §§ 65.127 through 65.133 (relating to facilities, equipment, performance standards, records, recent experience, and seal) in packing, maintaining, or altering (if authorized) the main parachute of a dual parachute pack to be used for intentional jumping.

§ 65.127 Facilities and equipment.

No certificated parachute rigger may exercise the privileges of his certificate unless he has at least the following facilities and equipment available to him:

(a) A smooth top table at least three feet wide by 40 feet long.

[(b) Suitable housing that is adequately heated, lighted, and ventilated for drying and airing parachutes.]

(c) Enough packing tools and other equipment to pack and maintain the types of parachutes that he services.

(d) Adequate housing facilities to perform his duties and to protect his tools and equipment.

§ 65.129 Performance standards.

No certificated parachute rigger may—

(a) Pack, maintain, or alter any parachute unless he is rated for that type;

(b) Pack a parachute that is not safe for emergency use;

(c) Pack a parachute that has not been thoroughly dried and aired;

(d) Alter a parachute in a manner that is not specifically authorized by the Administrator or the manufacturer;

(e) Pack, maintain, or alter a parachute in any manner that deviates from procedures approved by the Administrator or the manufacturer of the parachute; or

(f) Exercise the privileges of his certificate and type rating unless he understands the current manufacturer's instructions for the operation involved and has—

(1) Performed duties under his certificate for at least 90 days within the preceding 12 months; or

(2) Shown the Administrator that he is able to perform those duties.

§ 65.131 Records.

(a) Each certificated parachute rigger shall keep a record of the packing, maintenance, and alteration of parachutes performed or supervised by him. He shall keep in that record, with respect to each parachute worked on, a statement of—

(1) Its type and make;

(2) Its serial number;

(3) The name and address of its owner;

(4) The kind and extent of the work performed;

(5) The date when and place where the work was performed; and

(6) The results of any drop tests made with it.

(b) Each person who makes a record under paragraph (a) of this section shall keep it for at least 2 years after the date it is made.

(c) Each certificated parachute rigger who packs a parachute shall write, on the parachute packing record attached to the parachute, the date and place of the packing and a notation of any defects he finds on inspection. He shall sign that record with his name and the number of his certificate.

§ 65.133 Seal.

Each certificated parachute rigger must have a seal with an identifying mark prescribed by the Administrator, and a seal press. After packing a parachute he shall seal the pack with his seal in accordance with the manufacturer's recommendation for that type of parachute.

Appendix A

Aircraft Dispatcher Courses

(a) *Training course outline.*

It is not mandatory that the training course outline have the subject headings arranged exactly as listed in the following example. Any arrangement of headings and subheadings will be satisfactory provided all the subjects listed in this section are included. Each general subject of the outline shall be broken down, in detail, showing the items to be covered. Additional subjects, especially those which are not closely associated with the training of aircraft dispatchers, may be listed so long as the hourly requirements devoted to the subjects are not included as a part of the basic minimum hours.

(b) *Format of the training outline and course requirements.*

The course outline submitted for approval must be in looseleaf form, must include a table of contents and minimum coverage of the course material, and must include the following:

Subject	*Classroom Hours*
Federal Aviation Regulations	15
Subpart C of Part 65 of this chapter.	
Parts 25, 91, 103, and 121 of this chapter.	
Part 430 of the Regulations of the National Transportation Safety Board, "Rules Pertaining to Aircraft Accidents, Incidents, Overdue Aircraft, and Safety Investigations", on sale at the Government Printing Office.	
Meteorology	75
Basic properties of the atmosphere:	
Composition.	
Density.	
Measurement.	
General circulation.	
Solar heating.	
Clouds:	
Formation.	
Condensation.	
Precipitation.	
Use of cloud knowledge in forecasting.	
Stability and instability.	
Air mass analysis:	
Classification.	
Flying conditions to be encountered.	
Use of air mass knowledge in forecasting.	
Analysis of fronts:	
Structure and characteristics.	
Cloud sequences in fronts.	
Establishing position of front by cloud types.	
Fronts in North America and seasonal variations.	
Flying weather in fronts.	
Cyclones and anticyclones.	
Fog:	
Types.	
Cause and formation.	
Ice:	
Type.	
Cause and formation.	
Thunderstorms, hurricanes, tornadoes:	
Causes.	
Methods of forecasting.	
Structure and complexity of internal winds.	
Hail, its cause and formation.	
Turbulence:	
Cause.	
Determining the smooth level of flight.	

Subject	*Classroom Hours*
Interpreting weather data:	
Weather sequences and symbols.	
Weather map symbols.	
Drawing a weather map.	
Reading a weather map.	
Upper-level charts.	
Adiabatic charts.	
Winds-aloft charts.	
Instruments used to gather and record the weather.	
Weather forecasting:	
Extrapolation.	
Movements of fronts and air masses.	
Isobars.	
Barometric tendency.	
Application of weather knowledge:	
Planning a flight.	
Navigation	30
Study of the earth as a planet (charts, maps, and projections):	
Mercator projections.	
Gnomonic projections.	
Lambert projections.	
Polyconic projections.	
Chart reading:	
Symbols, landmarks, etc.	
Dead reckoning:	
Magnetic variation, compass deviation terms, wind and vectors.	
Correction angle.	
Finding wind drift-off course.	
Off-course problems.	
Wind velocity by single and double drift.	
Interception problems.	
Radius of action—problems.	
Search problems.	
Computer use—problems.	
Radio navigation:	
Principles of the radio range, radio compass direction finder, marker beacons, ILS, GCA, radio altimeter, LORAN, and any other.	
Navigation instruments:	
Altimeter, airspeed indicator, compass, drift and rate of climb indicator.	
Aircraft	15
Weight and balance:	
Center of gravity.	
How determined.	
Center of gravity limits.	
Problem in loading.	
Engine specifications:	
Powerplant:	
Operating limits.	
Fuel consumption.	
Accessories.	
Operating manual.	
Airplane specifications:	
Operational equipment.	
Flight controls, landing gear hydraulic system, electrical system, loading characteristics, fuel capacity heating and ventilating system, and deicing equipment.	
Performance:	
Effect of weight, wind, air density, and runway surfaces on takeoff performance of aircraft.	
Power setting and cockpit procedure.	
Types of cruise control.	
Communications	8
Radiotelephone rules and regulations.	
FCC rules and regulations.	
Company communications:	
Air-to-ground radio communications and procedures.	
Point-to-point communications and procedures.	
Equipment air-to-ground and point-to-point.	
FAA communications:	
Air-to-ground radio communications and procedures.	
Point-to-point communications and procedures.	
Equipment air-to-ground and point-to-point.	
Simulated Instrument Flight	10
Instrument familiarization.	
Bracketing.	
Orientation.	

Subject	Classroom Hours
Holding procedure.	
Let-down procedure.	
Missed-approach procedure.	
Air Traffic Control	30
Air route traffic control procedures and equipment.	
Airport traffic control procedures and equipment.	
Practical Dispatching	15
Preflight:	
Safety.	
Economic advantage.	
Crew.	
NOTAMS.	
The course and distance.	
Horizontal and vertical extent of the weather.	
Winds.	
Forecast.	
Minimum safe altitude.	
The cruising altitude.	
Flight plan.	
The alternate plan.	
Clearances, company air traffic control.	
The fuel.	
The load.	
The departure time.	
Inflight:	
Position report.	
Altimeter settings.	
Weather reports.	
Changes in forecast.	
Changing instrument altitude.	
Changing from VFR to IFR.	
Additional clearances.	
Emergency procedures.	
Postflight:	
Arrival report.	
Differences between the forecasted and actual weather encountered for subsequent flights.	

(c) *Facilities, equipment, and material.*

An applicant for authority to operate an approved aircraft dispatcher course of study must have the following facilities, equipment, and materials:

(1) *Facilities.*

Suitable classrooms, adequate to accommodate the largest number of students scheduled for attendance at any one time. Such classrooms shall be properly heated, lighted, and ventilated.

(2) *Equipment and materials.*

Suitable devices for the teaching of simulated instrument flight, navigation, and meteorology, acceptable textbooks, operations manuals, wall maps, charts, blackboards, and visual aids of a quantity which will provide for each student the theoretical and practical aspects of aircraft dispatching.

(d) *Instructors.*

(1) The number of instructors available for conducting the course of study shall be determined according to the needs and facilities of the applicant. However, the ratio of students per instructor may not exceed 25 students for one instructor.

(2) At least one instructor who possesses a currently effective aircraft dispatcher certificate must be available for coordination of the training course instruction.

(e) *Revision of training course.*

Requests for revision of course outlines, facilities, and equipment shall be accomplished in the same manner established for securing approval of the original course of study. Revisions must be submitted in such form that an entire page or pages of the approved outline can be removed and replaced by the revision.

The list of instructors may be revised at any time without request for approval, provided the minimum requirements are maintained and the local inspector is notified.

(f) *Credit for previous experience or training.*

A course operator may evaluate an entrant's previous experience or training and where the training or experience is provable and comparable to portions of the approved course curriculum, may, as each individual case warrants, allow credit for such, commensurate with accepted training practices. Where credit

is allowed, the basis for allowance and the total hours credited must be incorporated as a part of the student's records, provided for in paragraph (g) of this Appendix.

(g) *Student records and reports.*

Approval of a course may not be continued in effect unless the course operator keeps an accurate record of each student, including a chronological log of all instructions, subjects covered, and course examinations and grades, and unless he prepares and transmits to the FAA not later than January 31 of each year, a report containing the following information:

(1) The names of all students graduated, together with school grades for aircraft dispatcher courses.

(2) The names of all students failed or dropped, together with school grades and reasons for dropping.

(h) *Quality of instruction.*

Approval of a course may not be continued in effect unless at least 80 percent of the students who apply within 90 days after graduation are able to qualify on the first attempt for certification as aircraft dispatchers.

(i) *Statement of graduation.*

Each student who successfully completes the approved aircraft dispatcher course shall be given a statement of graduation.

(j) *Change of ownership, name, or location.*

(1) *Change of ownership.*

Approval of an aircraft dispatcher course may not be continued in effect after the course has changed ownership. The new owner must obtain a new approval by following the procedures prescribed for original approval.

(2) *Change in name.*

An approved course changed in name but not changed in ownership remains valid if the change is reported by the approved course operator to the local inspector who will issue a letter of approval under the new name.

(3) *Change in location.*

An approved course remains in effect even though the approved course operator changes location if the change is reported without delay by the operator to the local inspector who will inspect the facilities to be used in the new location and, if they are found to be adequate, issue a letter of approval showing the new location.

(k) *Cancellation of approval.*

(1) Failure to meet or maintain any of the standards set forth herein for the approval or operation of an approved aircraft dispatcher course is considered to be a sufficient reason for discontinuing approval of the course.

(2) If an operator desires voluntary cancellation of his approved course, he shall send a letter requesting cancellation to the Administrator of the Federal Aviation Administration through the local inspector.

(l) *Duration.*

The authority to operate an approved aircraft dispatcher course of study expires 24 months after the last day of the month of issuance.

(m) *Renewal.*

Application for renewal of an approved aircraft dispatcher course shall be made by letter addressed to the Administrator of the Federal Aviation Administration through the local inspector at any time within 60 days of the expiration date. Renewal of approval will depend on the course operator's meeting the current conditions of course approval and having a satisfactory record as a course operator.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1989-241-573:00051